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██████████ tippers contained sufficient information to open preliminary investigations and issue NSLs.³⁴³ ~~(TS//STLW//SI//OC/NF)~~

The Unit Chief wanted field offices at a minimum to know the identity of subscribers of tipped telephone numbers. He also said it was important to ascertain the correct identities of the subscribers at the time the tipped calls were placed. The Unit Chief stated that if the field office did not issue an NSL for subscriber information promptly, or if the field office relied only on publicly available information, the passage of time could cause the user of the phone to be misidentified. In addition, the Unit Chief said that even if a tipper did not result in any investigative value at the time of the tip, it nevertheless was important to identify the subscriber in the event the tipper became relevant in the future or to another investigation. For all of these reasons, the Unit Chief said he took steps to make the CAU, instead of the FBI field offices, responsible for issuing NSLs for telephone number tippers under the Stellar Wind program.³⁴⁴ ~~(TS//STLW//SI//OC/NF)~~

In approximately July 2003, a CAU analyst was read into the Stellar Wind program to process ██████████ NSLs. The analyst told us she questioned the Unit Chief and the Team 10 supervisor about whether it was permissible to issue NSLs out of a control file. The Unit Chief told us that he was not aware at this time that a control file such as ██████████ could not be used to issue NSLs. ~~(TS//STLW//SI//OC/NF)~~

The analyst volunteered to approach FBI OGC and met with Marion "Spike" Bowman of the OGC's National Security Law Unit to discuss this concern. She said she told Bowman that the CAU wanted to know if it could issue NSLs under ██████████ in view of its status as a control file. She said she told Bowman that the NSLs would seek subscriber information only and that field offices would be responsible for seeking related toll billing records if warranted by additional investigation. ~~(TS//STLW//SI//OC/NF)~~

According to the analyst, Bowman said that it would be permissible to issue NSLs out of the ██████████ file as long as only subscriber information was sought. The analyst said she could not recall whether Bowman affirmatively stated that issuing NSLs from a control file would be

³⁴³ On January 16, 2003, 2 months before the FBI SSA was appointed Unit Chief of the CAU, Attorney General Ashcroft authorized the FBI to issue NSLs during preliminary investigations. Prior to this time, the FCI guidelines authorized the FBI to issue NSLs only as part of a "full investigation." ~~(S//NF)~~

³⁴⁴ The Unit Chief told us that he did not believe it was critical at the preliminary stage to also obtain telephone subscribers' calling records, or "toll records," identifying all outgoing and incoming calls. ~~(TS//STLW//SI//OC/NF)~~

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permissible or whether he merely agreed that it would be permissible under the conditions the analyst presented.³⁴⁵ ~~(TS//STLW//SI//OC/NF)~~

Shortly after the meeting, the CAU implemented procedures for requesting that OGC issue NSLs to obtain subscriber information for each [REDACTED] telephone number tipper disseminated to field offices that the FBI was not already aware of or for which it did not have subscriber information. Under these procedures, the CAU analyst received a copy of each [REDACTED] EC with telephone number tippers as they were issued by Team 10 and drafted a separate approval EC to the NSLB that repeated this information and requested that the NSLB issue NSLs for the numbers listed. NSLB attorneys were responsible for determining whether the NSL requests were "relevant to an authorized investigation," as required by statute. If the attorneys determined that they were, NSLs were drafted and signed by the Deputy General Counsel for NSLB and forwarded to the CAU for service on the appropriate communications service providers. The providers returned the responsive records to the CAU, which in turn disseminated the information to the appropriate FBI field offices. From August 2003 to November 2006, the CAU issued over 500 NSLs under [REDACTED] ~~(TS//STLW//SI//OC/NF)~~

We interviewed FBI Deputy General Counsel Julie Thomas about NSL issuance practices under [REDACTED] Thomas was read into Stellar Wind shortly after joining the NSLB in October 2004. She was responsible for reviewing and authorizing [REDACTED] NSLs requested by the CAU. Thomas said she was familiar with the operational reasons the CAU began issuing NSLs under [REDACTED] but stated that it was not until the OIG was conducting its first review of the FBI's use of NSLs in 2006 that she learned [REDACTED] was a control file and the significance of this status as it related to issuing NSLs. Thomas said that the CAU's requests to NSLB to authorize NSLs under [REDACTED] always identified the specific file number associated with the project and indicated that the CAU had initiated a preliminary inquiry in connection with the NSL request. Thus, in Thomas's view, the NSL being requested was "relevant to" an authorized investigation, as

³⁴⁵ FBI General Counsel Valerie Caproni told the OIG that she believes Bowman based his guidance to the CAU on the understanding that the NSA, by reporting a tipper to the FBI, already had established a reasonable articulable suspicion that the foreign end of the contact was related to al Qaeda or an affiliated group. Caproni said that in view of the hundreds of al Qaeda investigations the FBI was conducting, Bowman likely concluded it was permissible to issue NSLs under [REDACTED] for the subscriber information of tippers even if at the time there was not a specific investigation to which each NSL could be connected. The Team 10 supervisor at this time told the OIG that he recalled the decision to issue NSLs from [REDACTED] was based on [REDACTED] close relationship to the FBI's ongoing investigations of al Qaeda and affiliated groups. ~~(TS//STLW//SI//OC/NF)~~

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required by statute and Justice Department investigative guidelines.³⁴⁶
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However, Thomas said she did not believe the [REDACTED] NSLs were improper even though they were issued from a control file. Thomas stated that the NSLs in fact were relevant to authorized international terrorism investigations in that the FBI was conducting hundreds of investigations of al Qaeda and its affiliates at the time the NSLs issued. Thomas told the OIG that, notwithstanding this position, in November 2006 the FBI converted [REDACTED] to an "umbrella investigative file" to reflect the program's relationship to international terrorism investigations. ~~(TS//SI//NF)~~

The OIG reviewed the communication from the CAU opening this investigative file. It stated that a member of the U.S. Intelligence Community [the NSA] reported to the FBI that al Qaeda members and associates are using telecommunications systems to facilitate their terrorist activities, that the FBI has independently determined that this is occurring, and that "inasmuch that Al-Qa'ida is a multi-faceted and international terrorism organization, the FBI has determined it is appropriate to open a full field investigative [sic]." The communication stated that the CAU was using information obtained from the member of the U.S. Intelligence Community to issue NSLs and that the results are disseminated to the appropriate FBI field offices. The communication also advised that all investigative leads associated with the investigation would be titled [REDACTED] to protect the source of the information and the methods used to obtain the information. ~~(TS//STLW//SI//OC/NF)~~

The FBI currently is taking a similar approach to NSLs under the [REDACTED]. A field office (instead of the CAU) is authorized to issue an NSL under the [REDACTED] investigative file, even if the field office does not open its own investigation and the tipped domestic telephone number or e-mail address is not relevant to another open investigation. However, NSLs issued under [REDACTED] can request subscriber information only and may not request transactional records, as was done under [REDACTED]. ~~(TS//SI//NF)~~

The FBI's decision to restrict [REDACTED] NSLs in this way was not required by law, but was an operational decision. As discussed below, FBI

³⁴⁶ The [REDACTED] file number is [REDACTED]. Thomas told us that she did not realize that the "C" designation stood for "Control File." In addition, in the approval ECs reviewed by the OIG that sought the issuance of NSLs, the CAU stated, among other things, that the [REDACTED] source reported telephonic contact between possible al Qaeda or other international terrorism entities and numbers in the United States and that "a preliminary CAU inquiry was conducted for the US telephone numbers reported by this source." ~~(TS//STLW//SI//OC/NF)~~

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field offices addressed most [REDACTED] tippers by conducting "threat assessments" to determine whether the tipper had a nexus to terrorism and warranted the field office initiating a preliminary or full investigation. The subscriber information for a tipper is sufficient for purposes of completing a threat assessment. The same is true for [REDACTED] tippers, and the current Team 10 supervisor told us that it would not be a "good business" practice to collect transactional records on a U.S. person unless a threat assessment justified the field office initiating its own preliminary or full investigation of the individual. ~~(TS//SI//NF)~~

We believe the FBI should have opened an [REDACTED] investigative file in July 2003 and used it to issue NSLs related to Stellar Wind information. The Justice Department investigative guidelines in effect at that time authorized the FBI to open full investigations of groups for which there were specific and articulable facts to believe were involved in international terrorism, such as al Qaeda. However, the FBI decided to issue Stellar Wind NSLs from an existing control file, which was contrary to FBI internal policy. ~~(TS//STLW//SI//OC/NF)~~

We did not find evidence that officials from the CAU and OGC involved in the decision to use an existing control file to issue NSLs related to Stellar Wind information deliberately tried to circumvent FBI guidelines. The July 2003 rationale for issuing the NSLs out of the control file – the close relationship between the Stellar Wind program and the FBI's ongoing investigations of al Qaeda and affiliated groups – essentially was the reasoning used in November 2006 to open the [REDACTED] investigative file and in November 2008 to open the [REDACTED] investigative file. As we found in our March 2007 report concerning the FBI's use of NSLs, the CAU and OGC officials involved in the decision to issue NSLs from the [REDACTED] control file concluded in good faith that the FBI had sufficient predication either to connect the [REDACTED] NSLs with existing preliminary or full investigations of al Qaeda and affiliated groups or to open new preliminary or full investigations in compliance with Justice Department investigative guidelines. Nevertheless, the decision violated FBI internal policy. ~~(TS//STLW//SI//OC/NF)~~

III. [REDACTED] and Scrubbing Process ~~(TS//SI//NF)~~

As discussed in Chapter Three, the Department implemented a process imposed by the FISA Court to "scrub" FISA applications to account for Stellar Wind-derived information. The objectives of the initial scrubbing process were to determine whether any NSA information contained in international terrorism FISA applications was derived from Stellar Wind and whether any of the facilities (telephone numbers or e-mail addresses) targeted by international terrorism FISA applications were also targeted for

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Stellar Wind collection (commonly referred to as dual coverage).

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The scrubbing process was coordinated by the Justice Department and NSA, beginning in February 2002 after Judge Lamberth was read into Stellar Wind. In May 2002, Judge Kollar-Kotelly succeeded Judge Lamberth as Presiding Judge of the FISA Court and continued the scrubbing procedures. However, whereas Judge Lamberth required only that he be notified of applications that contained Stellar Wind information, Judge Kollar-Kotelly required that such information be removed.

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As described in Chapter Four, on March 14, 2004, OIPR Counsel Baker briefed Judge Kollar-Kotelly about the President's decision to sign the March 11, 2004, Presidential Authorization without the Justice Department's certification as to the Authorization's form and legality, and about subsequent changes the Authorization made to the Stellar Wind program. ~~(TS//SI//NF)~~

According to a handwritten letter Judge Kollar-Kotelly drafted to Baker following this meeting, Baker had informed her that the Stellar Wind program [REDACTED]

[REDACTED] The letter also stated that Baker informed her that with these changes the Deputy Attorney General agreed to certify the program as to form and legality, and that OLC had prepared a new legal memorandum regarding the legality of Stellar Wind to replace the November 2001 memorandum authored by Yoo. ~~(TS//STLW//SI//OC/NF)~~

Judge Kollar-Kotelly's letter marked the first time her expectations concerning the Department's use of Stellar Wind information in FISA applications was communicated in writing to OIPR. Judge Kollar-Kotelly wrote,

Although the Court has every confidence in the oral representations of Jim Baker [and] does not have any reason to question his honesty or credibility with the FISC or this judge, I am requesting that representations, previously done orally, now be put in writing that relate to [Stellar Wind] and FISA applications so that there are no misunderstandings.

....

I want to emphasize my position which has been consistent since I came on the FISC in May 2002, the [Stellar Wind] program and FISA applications are to be kept separate, and no

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information direct or indirect, derived or obtained from [Stellar Wind] should be included in FISA applications. Only in this way can the integrity of the process and intelligence collected through FISA applications be maintained.

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Judge Kollar-Kotelly also wrote that she would not sign any FISA applications that contained substantive information from Stellar Wind-generated tips or any applications where the Stellar Wind tip was the sole or principal factor for an agency initiating the underlying investigation, "even if the investigation was conducted independently of the tip from [Stellar Wind]." ~~(TS//STLW//SI//OC/NF)~~

Baker told us that this letter was Judge Kollar-Kotelly's preliminary response to the changes in the Stellar Wind program. Through subsequent discussions between Judge Kollar-Kotelly and Baker, and between Baker and other Department and FBI officials, a more flexible arrangement was reached on scrubbing that addressed Judge Kollar-Kotelly's concerns without imposing an absolute prohibition on including certain Stellar Wind-derived information in FISA applications.³⁴⁷

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In short, the scrubbing procedures implemented in March 2004, and that continue to the present day, substantially expanded the procedures OIPR originally developed in February 2002.³⁴⁸ In addition to determining whether any NSA information contained in international terrorism FISA applications was derived from Stellar Wind and whether there was any dual coverage, Judge Kollar-Kotelly required the FBI to determine whether any facility (telephone number or e-mail address) that appeared in a FISA application also appeared in a Stellar Wind report and, if so, whether the FBI had developed, independent of Stellar Wind, an investigative interest in the facility before it was the subject of an [REDACTED] tipper.³⁴⁹ This third

³⁴⁷ FBI OGC said that it was not until these discussions that the FBI was aware of the scrubbing procedures OIPR had implemented in approximately February 2002 after Judge Lamberth was read into the Stellar Wind program. ~~(TS//SI//NF)~~

³⁴⁸ The scrubbing procedures described here apply both to NSA information derived from the Stellar Wind program and to information derived from the FISA Court's PR/TT and Section 215 bulk meta data orders. Until mid-2008 when the Stellar Wind program officially was closed, leads the NSA developed from the FISA-authorized bulk meta data collections were disseminated under the Stellar Wind compartment.

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³⁴⁹ As discussed in Chapter Three, Baker did not believe in May 2002, when he first discussed the subject with Judge Kollar-Kotelly, that such a scrub was possible. Baker told us that by March 2004 he better understood the NSA's and FBI's process for disseminating Stellar Wind information and the agencies' ability to track program-derived tips in a timely manner. ~~(TS//STLW//SI//OC/NF)~~

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scrub is coordinated among OIPR, the FBI's National Security Law Branch (NSLB), and Team 10. ~~(TS//STLW//SI//OC/NF)~~

The scrub requires NSLB to compile a list of all "facilities" – telephone numbers and e-mail addresses – that appeared in any draft international terrorism FISA applications.³⁵⁰ This list is compiled as FISA packages become ready for filing with the Court and is provided to an attorney in NSLB read into the Stellar Wind program. The attorney in turn forwards the facilities list to Team 10 at the NSA. Team 10 checks each facility against the NSA's Stellar Wind reports database to determine whether a listed facility is contained in any Stellar Wind reports and, if so, whether the facility appeared in the tearline portion of a report that was further disseminated to FBI field offices. If both inquiries are positive, Team 10 notes the date of the relevant Stellar Wind report and searches the FBI's Automated Case Support System (ACS) to determine whether the facility appears in ACS and, if so, the date the facility came to the FBI's attention. Team 10 reports the results of these checks to the NSLB attorney for review. ~~(TS//STLW//SI//OC/NF)~~

The NSLB attorney takes one of two steps at this stage. If Team 10's checks are negative – meaning none of the facilities are contained in a Stellar Wind report or contained in information below the tearline of a Stellar Wind report – the NSLB scrub attorney notifies the OIPR attorney and FBI case agent that the FISA application can be cleared for presentation to the FISA Court and that the application can proceed to final processing. If both checks on a facility are positive, the NSLB attorney will try to determine if there is a basis for the Court to allow the information in the application based on the theories, discussed in further detail below, that the FBI had an independent investigative interest in or would have inevitably discovered the facility in question. To determine this, the NSLB attorney researches FBI databases, analyzes records, and attempts to craft an argument under one of these theories. The NSLB attorney then provides this information to OIPR for presentation the Court. If the NSLB attorney cannot find a basis for including the information under either of the theories, and the facility is not essential to the showing of probable cause for the requested FISA coverage, the facility is excised from the FISA application, and processing continues. If the information is important to the probable cause showing, the NSLB attorney discusses with OIPR whether to make the argument to the appropriate FISA Court judge (initially

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Judge Kollar-Kotelly and now, the judge assigned to case) that the facility nevertheless can remain in the application. ~~(TS//STLW//SI//OC/NF)~~

According to the Deputy General Counsel for NSLB, the argument to keep such information in an application is based on "standard Fourth Amendment [exclusionary rule] analysis." The "exclusionary rule" generally holds that where the government obtains evidence in violation of the Fourth Amendment, the court will suppress, or exclude, the evidence from the prosecutor's case-in-chief in a criminal trial. Under the "fruit of the poisonous tree" doctrine, a corollary to the exclusionary rule, any evidence obtained directly or derivatively from the government's improper conduct is also excluded. However, there are several exceptions to the exclusionary rule, two of which were relevant to scrubbing: independent source and inevitable discovery. The independent source exception holds that the exclusionary rule does not bar the use of evidence obtained in violation of the Fourth Amendment if there is also an independent, legal source for the evidence.³⁵¹ The inevitable discovery exception applies when evidence obtained in violation of the Fourth Amendment would have been obtained independently had the illegal search not occurred, which the government must prove by a preponderance of the evidence.³⁵² (U)

Thus, in the scrubbing context, the issue is whether the Stellar Wind information contained in a FISA application should not be excluded, either because the FBI had an investigative basis independent of Stellar Wind for including the information in the application or because the FBI inevitably would have discovered the information in the absence of Stellar Wind. More specifically, under the independent investigative basis exception, if Team 10's search of ACS shows that a facility came to the FBI's attention before the facility appeared in a Stellar Wind report, this fact establishes that the FBI has an independent, non-Stellar Wind factual basis to include the facility in the application.³⁵³ NSLB Deputy General Counsel Thomas told us that in her experience the FBI already is aware of the facility – meaning it appears in ACS or other FBI databases – in nearly every instance that a facility contained in a FISA application also appears in a Stellar Wind report. ~~(TS//STLW//SI//OC/NF)~~

³⁵¹ See *Segura v. United States*, 468 U.S. 796, 805 (1984). (U)

³⁵² See *Nix v. Williams*, 467 U.S. 431, 443 (1984). (U)

³⁵³ For example, in one case the NSLB attorney's review of the underlying investigative file showed that the FBI had obtained the telephone number at issue in response to an NSL Letter. Because the NSL was dated earlier than the Stellar Wind report that also contained the telephone number, the FBI had an independent investigative basis for including the number in the FISA application. ~~(TS//STLW//SI//OC/NF)~~

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The inevitable discovery exception in the scrubbing context applies when Team 10's check of ACS indicates the FBI was not aware of the facility before the date of the Stellar Wind report containing the facility. Under this approach, the NSLB attorney attempts to demonstrate to OIPR that normal investigative steps in the underlying investigation inevitably would have identified the facility in question. The scrubbing attorney analyzes such case evidence as close associates and other relationships of the subjects of the investigation that could logically lead investigators – through NSLs, for example – to the facility contained in the Stellar Wind report.³⁵⁴

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Until January 2006, when the full FISA Court was read into Stellar Wind, Judge Kollar-Kotelly required that all applications the FBI determined contained facilities or information that also appeared in Stellar Wind reports be cleared with her before being filed with the FISA Court. As she wrote in a January 12, 2005, letter to OIPR, "I want to ensure, that, to the extent possible, [Stellar Wind] information is excluded from applications submitted to the FISC and that, if it is necessary to include such information, it is specifically identified to the FISC as derived from [Stellar Wind] collection when the application is presented." OIPR Deputy Counsel Skelly-Nolen – who was read into Stellar Wind on March 12, 2004, but who had been involved in the scrubbing process since 2001 – was responsible, along with Baker, for coordinating this aspect of the scrubbing process and, when warranted, for presenting the argument to the judge that an application containing information that was the subject of a Stellar Wind report to the FBI should nevertheless be approved for filing. ~~(TS//STLW//SI//OC/NF)~~

Skelly-Nolen characterized the applications she presented to Judge Kollar-Kotelly as either "vanilla" or "non-vanilla." Vanilla applications were those for which Skelly-Nolen could confidently represent that the FBI had an independent investigative basis for the facility identified in the application that was the subject of a Stellar Wind report (for example, a facility the FBI learned of through FISA coverage that pre-dated the Stellar Wind report). Skelly-Nolen told us that over time Judge Kollar-Kotelly allowed the vanilla applications to be handled telephonically in an unclassified manner, a departure from her general requirement that the discussions be held in judge's chambers. Non-vanilla applications typically involved those cases that required Skelly-Nolan to demonstrate that the FBI

³⁵⁴ For example, in one case a telephone number of a particular business did not appear in an FBI database prior to the date it appeared in a Stellar Wind report. However, the subject of the underlying investigation was the target of an FBI national security investigation, and OIPR argued that the telephone number inevitably would have been connected to the subject through the "natural course of the investigation," possibly from toll records associated with other telephone numbers used by the subject, trash covers and open source information, or physical surveillance. ~~(TS//STLW//SI//OC/NF)~~

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inevitably would have discovered the facility in question during the normal course of investigation. Skelly-Nolen said these cases were always discussed with Judge Kollar-Kotelly in person. ~~(TS//STLW//SI//OC/NF)~~

Skelly-Nolen told us that there were instances when Judge Kollar-Kotelly requested additional information to support the proffered theory for including Stellar Wind information in the FISA application. In some cases, Judge Kollar-Kotelly simply struck a line through the paragraphs in the filed application that contained the Stellar Wind-derived information and annotated in the margin, "This section (strike) not considered in evaluation of probable cause," followed by her signature and the date. Skelly-Nolen also said that in one or two cases Judge Kollar-Kotelly required that certain Stellar Wind information arguably necessary for establishing probable cause be removed from the applications.³⁵⁵ However, in general Judge Kollar-Kotelly accepted OIPR's and the FBI's assessment that there was a non-Stellar Wind investigative basis for the information in question, or that the information inevitably would have been discovered even in the absence of Stellar Wind-derived tips to the FBI. ~~(TS//STLW//SI//OC/NF)~~

After operating under the expanded scrubbing procedures for approximately 6 months, Judge Kollar-Kotelly agreed in November 2004 to allow other FISA Court judges who had not yet been read into the Stellar Wind program to handle scrubbed international terrorism applications. However, Judge Kollar-Kotelly still required that Skelly-Nolen bring to her attention all vanilla and non-vanilla applications so they could be "cleared" before being formally filed. As noted above, it was not until January 2006, when the full FISA Court was read into Stellar Wind, that Skelly-Nolen was able to discuss such cases with other judges. ~~(TS//STLW//SI//OC/NF)~~

Since that time, the basic scrubbing procedure described above has continued. The Office of Intelligence attorney primarily responsible for the process told us that each new FISA application that references a facility that was disseminated under Stellar Wind is brought to the attention of the judge assigned to the case.³⁵⁶ However, with limited exceptions, the FISA Court judges do not require that the government inform them of renewal applications that contain such facilities so long as they were previously brought to the Court's attention in the initiation application or prior renewal applications. The Office of Intelligence attorney told us that the government

³⁵⁵ According to Skelly-Nolen, Judge Kollar-Kotelly nevertheless allowed OIPR to file these applications and approved them. ~~(TS//STLW//SI//OC/NF)~~

³⁵⁶ The Office of Intelligence Policy and Review (OIPR) became a part of the Department's National Security Division, which was created in September 2006. As of April 2008, OIPR was renamed the Office of Intelligence. (U)

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relies on the independent investigative interest theory in the majority of cases in which it seeks to keep a facility in an application. The attorney also said that from the perspective of the Office of Intelligence the scrubbing process is more manageable today than in the past because the process is better organized, additional personnel have been read into the program, and the FISA Amendments Act of 2008 extended the period of time the government must bring emergency applications to the FISA Court from 72 hours to 7 days. However, from the FBI's perspective, the scrubbing process continues to be burdensome and requires a significant expenditure of time and other resources. (TS//STLW//SI//OC/NF)

IV. Impact of Stellar Wind Information on FBI Counterterrorism Efforts (S//NF)

This section examines the impact of the information obtained from Stellar Wind on FBI counterterrorism efforts. It first provides statistics concerning the number of tippers from Stellar Wind information – telephony, e-mail, and content – disseminated to FBI field offices through the [REDACTED] process. Next, it describes how FBI field offices generally investigated [REDACTED] tippers and the typical results of the investigations. This section then summarizes two statistical surveys of meta data tippers the FBI conducted in 2006 to assess the value of Stellar Wind to FBI operations, and describes observations about the program's value provided to us by FBI officials and employees in OIG interviews and contained in documents the OIG obtained during the course of this review. Finally, the section examines [REDACTED] FBI international terrorism investigations commonly cited as examples of Stellar Wind's contribution to counterterrorism efforts in the United States. (TS//STLW//SI//OC/NF)

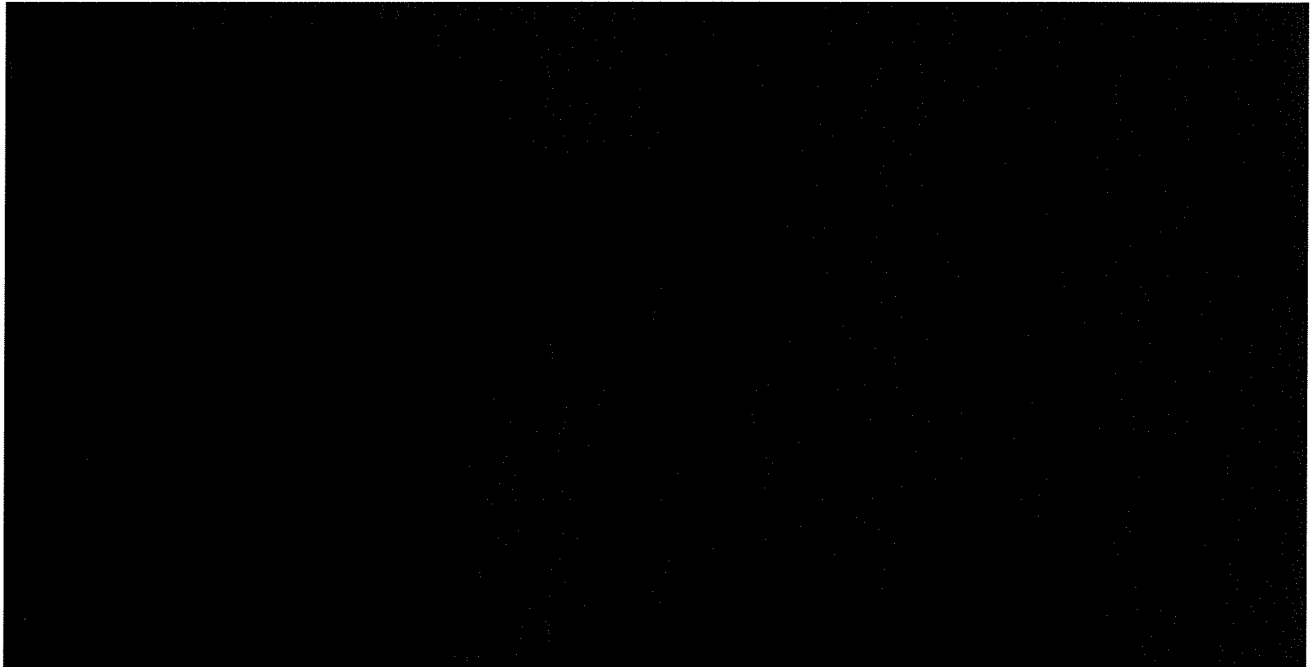
A. Stellar Wind/[REDACTED] Statistics ~~(TS//STLW//SI//OC/NF)~~

We reviewed FBI and NSA statistics relating to the Stellar Wind program. According to an NSA document, from October 1, 2001, to February 28, 2006, the NSA provided [REDACTED] telephone numbers and e-mail addresses under the Stellar Wind program. The FBI disseminated most of these as tippers to field offices. Chart 6.1 depicts the distribution of the telephone numbers and e-mail addresses the NSA provided the FBI by type. (TS//STLW//SI//OC/NF)

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As described in Chapter Three, the NSA provided ratings, or [REDACTED] for each telephone number and e-mail address to help the FBI prioritize the tippers being disseminated to field offices. The FBI defined the rankings in ECs disseminated to field offices in the following manner:



The FBI included these rankings in [REDACTED] and [REDACTED] ECs until early 2003. At that time, Team 10 began to make independent assessments about tippers' priority for the FBI, set leads on that basis, and generally discontinued including the ratings in [REDACTED] ECs. As discussed in this chapter, Team 10 usually set Action leads for telephone numbers and e-mail addresses the FBI did not already know and Discretionary leads for those the FBI was aware of in connection with closed or ongoing cases. ~~(TS//STLW//SI//OC/NF)~~

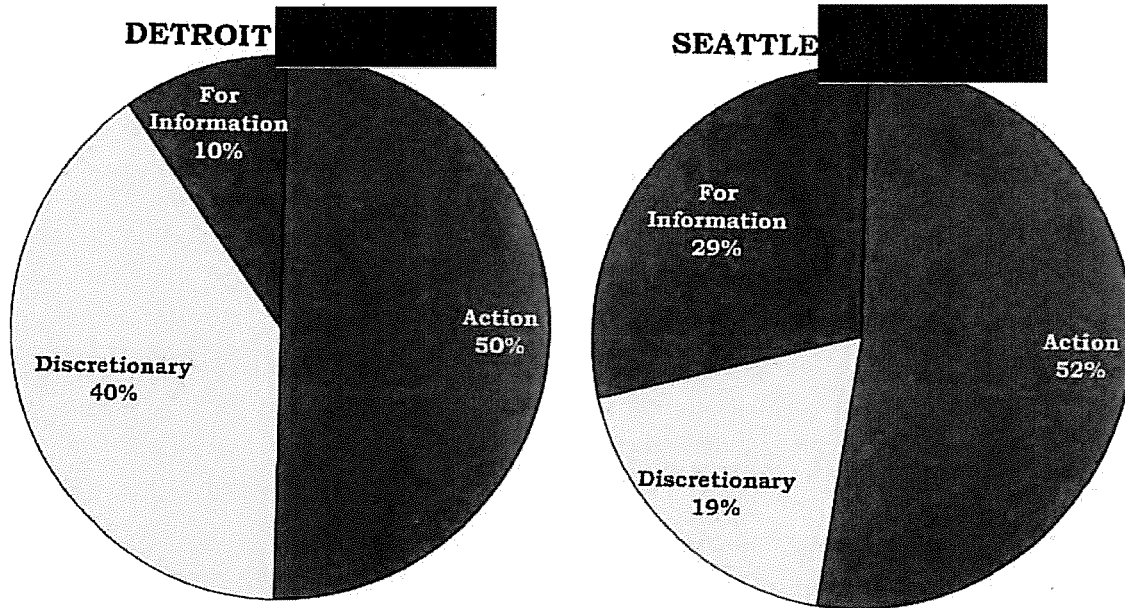
We could not compare the relationship between the NSA's [REDACTED] and the FBI's leads because the FBI did not maintain statistics about the lead type for each tipper that Team 10 disseminated. However, in connection with our visits to the FBI's Detroit and Seattle field offices, we examined the number of individual telephone numbers and e-mail addresses provided to those offices and the type of lead assigned for each. We determined that FBI Headquarters assigned Action leads for approximately 50 percent of the total [REDACTED] leads sent to these offices. As depicted in Chart 6.2, of the [REDACTED] leads sent to the Detroit field office from December 2001 to December 2006, [REDACTED] as Action leads. During this same period, of the [REDACTED] leads sent

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to the Seattle field office, [REDACTED] as Action leads. These figures, taken together with the fact that only 5 percent of the meta data leads the NSA provided the FBI from October 1, 2001, to February 28, 2006, were rated [REDACTED], indicate that FBI field offices were required to investigate a substantial volume of telephone numbers and e-mail addresses that NSA analysts had rated [REDACTED] in terms of their connections to terrorism. (TS//STLW//SI//OC/NF) —

CHART 6.2: Percentage of Lead Types for Detroit and Seattle
 (January 2001 to May 2007) (S//NF)
 (Chart below is ~~SECRET//NOFORN~~)



With respect to leads that provided the content of communications the NSA intercepted under Stellar Wind, the manner in which these leads were disseminated depended on the nature of the communication. [REDACTED]

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³⁵⁷ The FBI did not maintain statistics on the number of [REDACTED] content tippers disseminated to FBI field offices from Stellar Wind content reports. ~~(TS//STLW//SI//OC/NF)~~

We also found that [REDACTED] leads were distributed unevenly among FBI field offices. The majority of tippers were disseminated to large offices with substantial counterterrorism programs, such as New York, Washington, Chicago, and Los Angeles, and to offices whose territory contained significant Middle Eastern populations, such as Detroit. For example, FBI records indicate that of the [REDACTED] leads disseminated in 2005, 50 percent were assigned to 10 field offices. Table 6.1 depicts the distribution of [REDACTED] in 2005 among FBI field offices.³⁵⁸ ~~(TS//STLW//SI//OC/NF)~~

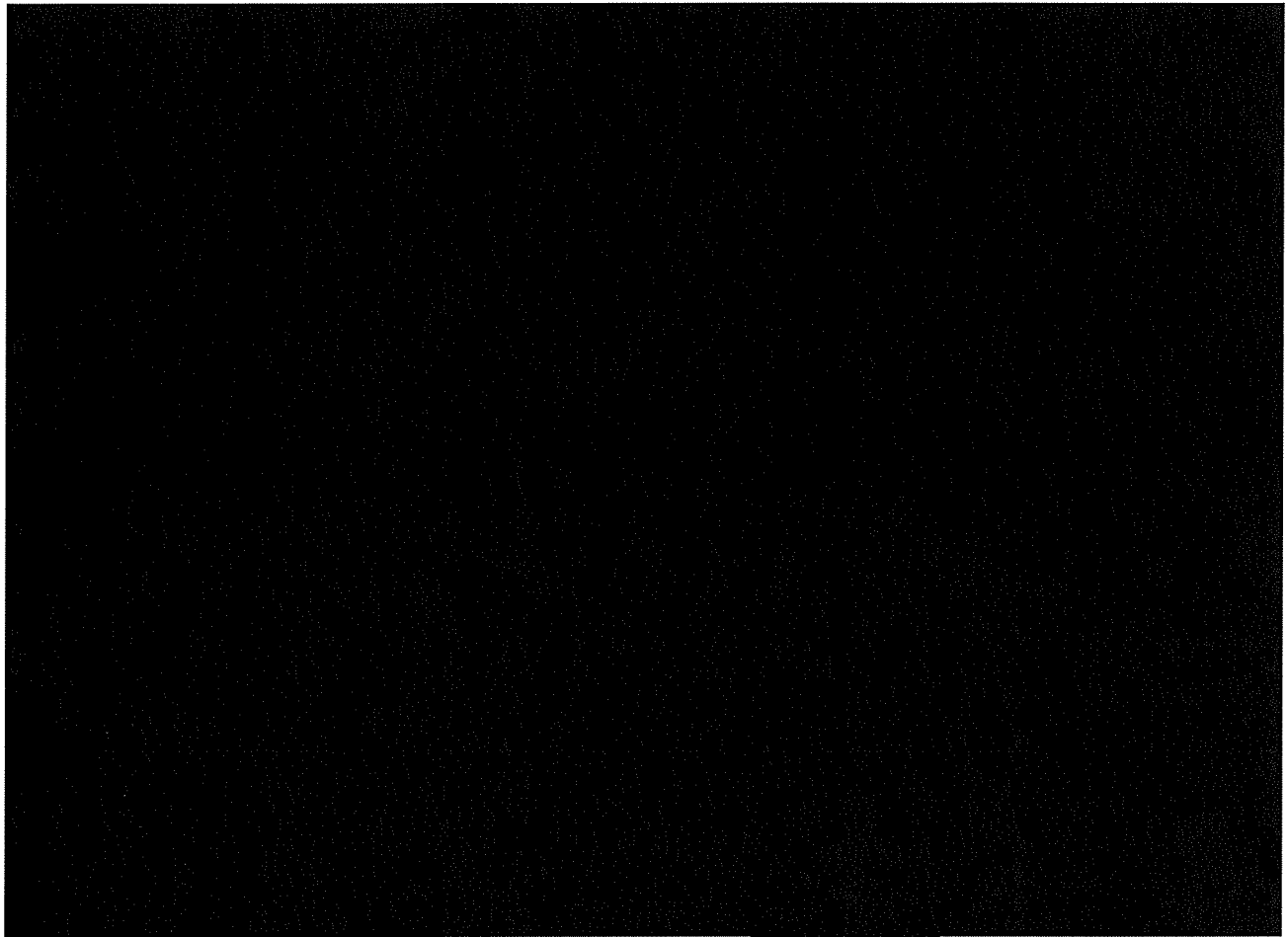
TABLE 6.1: [REDACTED] Leads by Division (2005) (U//FOUO)
(Table below is ~~SECRET//NOFORN~~)



³⁵⁷ [REDACTED]

³⁵⁸ A "lead" in these figures does not equate to a single telephone number or e-mail address; each [REDACTED] lead could contain several telephone numbers or e-mail addresses. For example, the Detroit field office received [REDACTED] in 2005 containing [REDACTED] individual tippers. ~~(TS//STLW//SI//OC/NF)~~

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B. FBI Field Office Investigations of [REDACTED] Tippers
~~(S//NF)~~

FBI field offices were not required to investigate every tipper disseminated under [REDACTED]³⁵⁹ Rather, the type of lead that the [REDACTED] EC assigned – Action, Discretionary, or For Information – governed a field office's response to a tipper.³⁶⁰ [REDACTED] content tippers, which

³⁵⁹ As discussed in Chapter Three, the practice under the [REDACTED] in the first several weeks of the Stellar Wind program was to set Action leads for all telephone number tippers. This practice was modified when the NSA began to designate each tipper in a Stellar Wind report [REDACTED]

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³⁶⁰ An Action lead instructs a field office to take a particular action in response to the EC. An Action lead is "covered" when the field office takes the specified action or conducts appropriate investigation to address the information in the EC. A Discretionary lead allows the field office to make a determination whether the information provided warrants investigative action. A field office that receives a "For Information" lead is not expected to take any specific action in response to the EC, other than possibly route the

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provided information derived from communications of telephone numbers and e-mail addresses under surveillance, generally assigned Discretionary or For Information leads. The information in these tippers usually related to individuals already under FBI investigation and was provided to the agents responsible for those cases. [REDACTED] e-mail address tippers generally assigned Discretionary leads to field offices unless the information was particularly urgent. As noted above, content and e-mail address tippers accounted for a comparatively small portion of the [REDACTED] tippers disseminated by Team 10. (TS//STLW//SI//OC/NF)

The vast majority of FBI investigative activity related to Stellar Wind information involved responding to [REDACTED] telephone number tippers that assigned Action leads. Team 10 generally assigned Action leads for telephone numbers that the FBI did not previously know or that Team 10 otherwise deemed a high priority, such as a number that had a relationship to a major FBI investigation.³⁶¹ From approximately September 2002 (when [REDACTED] was created) to July 2003, Action leads instructed field offices to obtain subscriber information for the telephone numbers within its jurisdiction and to conduct any "logical investigation to determine terrorist connections." However, some agents complained that these Action leads lacked guidance about how to make use of the tippers, particularly given concerns that the [REDACTED] communications provided insufficient predication to open national security investigations. (TS//STLW//SI//OC/NF)

Two changes in 2003 addressed some of these complaints. First, in July 2003 the CAU assumed responsibility from field offices for issuing NSLs, as we discussed in Section II above. Second, in October 2003 the Attorney General issued new guidelines for FBI national security investigations that created a new category of investigative activity called a "threat assessment."³⁶² [REDACTED]

communication to the office personnel whose investigations or duties the information concerns. (S//NF)

³⁶¹ Discretionary leads were assigned to telephone numbers that already were known to the FBI, meaning the number or the number's subscriber was referenced in an active FBI investigation. These leads identified the case number of the related investigation and advised receiving field offices to "use the information as deemed appropriate" to bring the information to the attention of the appropriate case agent. (S//NF)

³⁶² As noted earlier, the October 2003 guidelines, entitled Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSI guidelines), replaced the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations. In September 2008, the Attorney General issued Guidelines for Domestic FBI Operations that replaced the October 2003 NSI guidelines with respect to domestic operations. The September 2008 guidelines use the term "assessment" instead of "threat assessment." (U)

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[REDACTED]

Thus, beginning in October 2003, Action leads assigned by [REDACTED] telephone number tipplers instructed field offices to conduct threat assessments.

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During our review, we visited the Detroit and Seattle field offices to review their handling of [REDACTED] leads. In addition, we interviewed several supervisory special agents at FBI Headquarters who had experience handling the leads in their respective field offices before being read into the program. In general, these agents' and analysts' experience with [REDACTED] leads was unremarkable. A threat assessment conducted by these agents and analysts typically involved querying several FBI, public, and commercial databases for any information about the tipped telephone number, and requesting that various state and local government entities conduct similar queries. Sometimes these queries identified the subscriber to the telephone number before the CAU obtained the information with an NSL. In other cases, the threat assessments continued after the field office received the NSL results.³⁶³ ~~(TS//STLW//SI//OC/NF)~~

Examples of the databases utilized in their threat assessments included FBI systems such as the Automated Case Management System and [REDACTED] other government databases, such as the [REDACTED]

[REDACTED] state [REDACTED] databases, and local police department databases; and commercial databases, such as [REDACTED]. The results of their checks of these databases could sometimes be extensive and include personal information not only about the subscriber to the tipped telephone number, but also about individuals residing in the subscriber's residence or other acquaintances. In other cases, checks were negative or revealed little information about the number or the subscriber. ~~(S//NF)~~

³⁶³ We were told that it sometimes took [REDACTED] for field offices to receive subscriber information from the CAU. A Team 10 supervisor said field offices frequently contacted the CAU about the status of outstanding NSLs because the usefulness of threat assessments conducted on a telephone number were limited without the identity of the subscriber. ~~(S//NF)~~

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The agents and analysts said they reviewed the results of these database checks to determine whether additional investigative steps under the threat assessment were warranted or whether there was predication to open a preliminary inquiry. None of the agents we interviewed could recall initiating any investigations based on a threat assessment of an [REDACTED] tipper.³⁶⁴ They said they frequently closed [REDACTED] leads after conducting a threat assessment interview of the subscriber and determining that there was no nexus to terrorism or threat to national security. Alternatively, the leads were closed based solely on the results of database checks. ~~(TS//SI//NF)~~

Under the Attorney General's October 2003 national security investigations guidelines, [REDACTED]

[REDACTED] Under [REDACTED] agents were not permitted to explain to subscribers how they obtained the information that caused them to seek an interview. Instead, agents simply asked subscribers about their contacts in certain countries and with specific telephone numbers. Agents told us that subscribers generally consented to these interviews and were cooperative and forthcoming. In a few cases, subscribers refused the request or sought the advice of counsel.³⁶⁶ ~~(TS//STLW//SI//OC/NF)~~

³⁶⁴ Prior to the CAU's July 2003 decision to assume responsibility for issuing NSLs, agents in FBI field offices often opened investigations in order to issue NSLs to obtain subscriber information. These cases usually were closed after the agents conducted investigations and determined the domestic telephone number tipper did not have a nexus to terrorism. ~~(S//NF)~~

³⁶⁵ On September 29, 2008, the Attorney General issued new guidelines for domestic FBI operations, which includes national security investigations. These guidelines

[REDACTED] Compare Attorney General's Guidelines for Domestic FBI Operations, Section II.A.4.f. (September 29, 2008), with Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection, Section II.A.6. (October 31, 2003). ~~(S//NF)~~

³⁶⁶ Several of the threat assessment interviews that agents described to us and that we reviewed in FBI documents provided examples of how some domestic telephone numbers appeared on their face to be in contact with an individual involved in terrorism. In the Seattle field office, several interviews revealed that the foreign telephone calls placed to domestic numbers were made using a pre-paid telephone service from local stores because the callers, often relatives of the domestic contacts, did not have telephone service at their residences. Thus, while the intelligence indicating that an individual involved in terrorism used the foreign telephone number might have been accurate, the number also was used by individuals about whom there was no reason to believe were involved in terrorism. ~~(TS//STLW//SI//OC/NF)~~

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FBI field offices were required to report the results of the threat assessments to the CAU. In most of the ECs we reviewed, the field offices reported all of the information that was located about the telephone numbers, including the details of any subscriber interviews, and then stated that the office determined the tipped telephone number did not have a nexus to terrorism and considered the lead closed. Much less frequently, field offices reported that a preliminary investigation was opened to conduct additional investigation.³⁶⁷ Regardless of whether any links to international terrorism were identified, the results of any threat assessments and the information that was collected about subscribers generally were reported in communications to FBI Headquarters and uploaded into FBI databases.

~~(S//NF)~~

C. FBI Statistical Surveys of [REDACTED] Meta Data Tipplers
~~(TS//STLW//SI//OC/NF)~~

The FBI made several attempts, both informal and more formal, to assess the value of Stellar Wind to FBI counterterrorism efforts. The first was an informal attempt by the FBI's OGC. FBI General Counsel Valerie Caproni told us that in early 2004 she spoke with the CAU Unit Chief and the Section Chief for the Communications Exploitation Section about trying to assess the value of Stellar Wind information. According to Caproni, the two managers stated that based on anecdotal and informal feedback from FBI field offices, the telephony meta data tipplers were the most valuable intelligence from the program for agents working on counterterrorism matters. However, Caproni told us it was difficult to conduct any meaningful assessment of the program's value in early 2004 because FBI field offices at that time were not required to report to FBI Headquarters the investigative results of the Stellar Wind leads disseminated under [REDACTED]. FBI Headquarters did not make such reporting mandatory until October 2004. As a result, Caproni's discussions with the FBI managers did not result in any written assessment of the program.

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³⁶⁷ The CAU advised field offices that investigative feedback about [REDACTED] tipplers was important because it informed the "reliable source's" (the NSA's) assessment of whether to continue analyzing the "foreign entity" that caused the tipplers to be disseminated. An NSA official told us that such information was also important to improving the NSA's analytical process, but he said it was sometimes difficult to obtain such feedback. A CAU Unit Chief told us that the NSA expressed particular concern about insufficient feedback from the FBI regarding investigative results pertaining to the tipplers' nexus to terrorism. He said this was a difficult situation in that [REDACTED] professed to be sending out high value information about known links to terrorism," and it was "uncomfortable" to receive little feedback from field offices other than, "You're sending us garbage." Members of Team 10 told us that efforts to improve field office feedback over time had mixed results. ~~(TS//STLW//SI//OC/NF)~~

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The FBI's second informal assessment of the value of Stellar Wind came after the December 2005 New York Times articles that publicly disclosed the content collection aspect of the Stellar Wind program. Caproni said that in preparation for Director Mueller's testimony at congressional hearings in 2006 on the issue, she attempted to evaluate the Stellar Wind program. Caproni stated that because NSA Director Hayden asserted publicly that the program was valuable, she wanted Mueller's testimony to identify, if possible, any investigations that illustrated Stellar Wind's positive contribution to the FBI's counterterrorism efforts. Caproni stated that this effort was complicated by the fact that Mueller's testimony would be limited only to the aspect of the program disclosed in the New York Times article and subsequently confirmed by the President – the content collection basket. ~~(TS//STLW//SI//OC/NF)~~

As discussed above, Caproni said that FBI field offices did not find this aspect of the program to be as useful as the telephony meta data, primarily because [REDACTED] [REDACTED] was comparatively small and the FBI had FISA coverage on many of these already. Caproni told us that ultimately she was able to identify "a couple" of content tippers that contributed to FBI investigations, but she commented that there were not many. ~~(TS//STLW//SI//OC/NF)~~

The FBI subsequently conducted two more efforts to study the Stellar Wind program's impact on FBI operations, both in early 2006. The first study sampled the [REDACTED] tippers the FBI had received under Stellar Wind from 2001 through 2005. The second study reviewed [REDACTED] e-mail tippers the NSA provided the FBI from August 2004 through January 2006. In both of these studies, the FBI sought to determine what percentage of tippers resulted in "significant contribution[s] to the identification of terrorist subjects or activity on U.S. soil." We describe in the next sections the findings of these two studies. ~~(TS//STLW//SI//OC/NF)~~

1. Early 2006 Survey [REDACTED] Telephony and E-Mail Meta Data Tippers ~~(TS//STLW//SI//OC/NF)~~

Following the December 2005 New York Times article publicly disclosing the content collection aspect of Stellar Wind, additional members of the Senate and House Intelligence Committees were read into the program. During this time, the NSA provided to cleared members of Congress substantive briefings about Stellar Wind, and the FBI was asked to testify about its participation in the program. In preparation for these briefings and testimony, the FBI sought to quantify the value of Stellar Wind intelligence for FBI counterterrorism operations. The CAU conducted a statistical study for this purpose, and in May 2006 the FBI provided a copy

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of the statistical report to the Senate Select Committee on Intelligence.

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The study, conducted during a 1-week period in January 2006, sampled [REDACTED] unique telephone numbers and e-mail addresses the NSA provided the FBI from the inception of the Stellar Wind program through 2005.³⁶⁸ The study sought to determine what percentage of the tippers resulted in "significant contribution[s] to the identification of terrorist subjects or activity on U.S. soil." Working with an FBI statistician, the CAU determined that [REDACTED] randomly selected tippers would be required to obtain statistically significant results.

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Approximately 30 analysts from the FBI's Counterterrorism Division were assigned the task of reviewing [REDACTED] tippers to determine the disposition of each.³⁶⁹ The analysts sought to determine whether a particular tipper made a "significant" contribution to FBI counterterrorism efforts. For purposes of the study, a tipper was considered "significant if it led to any of three investigative results: the identification of a terrorist, the deportation from the United States of a suspected terrorist, or the development of an asset that can report about the activities of terrorists." A tipper that led to a field office opening a preliminary or full investigation was not considered "significant" for purposes of the study.

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The analysts researched each tipper's disposition in investigative records contained in FBI electronic databases, beginning with the [REDACTED] EC that disseminated the tipper to the field. If an analyst concluded based on this research that a tipper was significant, a second analyst who was familiar with the Stellar Wind program further reviewed that determination. If the CAU analyst agreed with the initial finding, the tipper

³⁶⁸ According to the CAU report, the NSA had provided the FBI [REDACTED] tippers since the inception of Stellar Wind, but [REDACTED] were duplicates. [REDACTED] was the total number of unique tippers. The tippers by year were broken down as follows: [REDACTED]

[REDACTED] The study also did not include content tippers. ~~(TS//STLW//SI//OC/NF)~~

³⁶⁹ Most of the analysts were not read into the Stellar Wind program and were told that the study concerned the disposition of [REDACTED] leads. Of [REDACTED] tippers reviewed by the analysts, approximately 12 percent were e-mail addresses, a figure consistent with the overall tipper breakdown between e-mail addresses and telephone numbers.

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and supporting information was presented to the CAU Unit Chief for a final review.³⁷⁰ ~~(TS//STLW//SI//OC/NF)~~

Based on this methodology, the study found that [REDACTED] 1.2 percent, of [REDACTED] tippers were "significant." The study extrapolated this figure to the entire population of [REDACTED] tippers and determined that one could expect to find [REDACTED] tippers the NSA provided the FBI under Stellar Wind were significant. ~~(TS//STLW//SI//OC/NF)~~

The report documenting the study's findings included brief descriptions of [REDACTED] "significant" tippers. For example, according to the report, one tipper led to the opening of a full investigation that developed evidence that the user of the tipped e-mail address had "definite ties to terrorism." The user was arrested and pled guilty to charges of [REDACTED]

Another tipper led to the identification of an individual who, [REDACTED]

~~(TS//STLW//SI//OC/NF)~~

Several of the "significant" tippers related to ongoing FBI investigations. For example, information from one tipper designated as significant was already known to the relevant FBI field office, which had an investigation ongoing concerning a subject associated with the tipper prior to receiving the [REDACTED] EC. According to the study's brief description of the case's significance, the investigative file stated that the tipper was "very beneficial in the on-going investigation" by connecting the subject to terrorism, without describing that connection. Another tipper caused a field office to change a preliminary investigation to a full investigation regarding the possible illegal [REDACTED] The tipper indicated a connection between one of the subjects of the preliminary investigation and a known terrorist. ~~(TS//STLW//SI//OC/NF)~~

The study also found that 28 percent of [REDACTED] tippers were never disseminated to FBI field offices for investigation. According to the report, the CAU filtered out these tippers based on "lack of significance" when they were first provided to the FBI by the NSA. These tippers were deemed non-significant for purposes of the study. In addition, the study found that for 22 percent of the sample tippers, FBI field offices did not report any

³⁷⁰ According to a CAU analyst closely involved with the study, establishing a fairly "tight" criteria to identify "significant" tippers was necessary in order to obtain statistically significant results within the one-week time frame the CAU was given to complete the review. The analyst told the OIG that analysts initially applied a broader "significant" standard in their reviews of the tippers, but that it immediately became apparent that a stricter standard was required. The Unit Chief for the CAU told the OIG that the definition of "significant" ultimately used for the study was reached by consensus among Counterterrorism Division operational and analytical personnel. ~~(S//OC/NF)~~

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investigative results. The study assumed that the field offices investigated the leads that were set but did not document their work in ACS. These tippers were deemed non-significant for purposes of the study.³⁷¹ Thus, combining these two categories, approximately 50 percent of the tippers reviewed as part of the CAU study either were never disseminated to FBI field offices, or were disseminated but with unknown investigative results.³⁷²

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The FBI's report of the study did not explicitly state any conclusions about whether Stellar Wind was a valuable program. FBI OGC told the OIG that based in part on the results of this study, which found [REDACTED] of the leads were significant, FBI executive management concluded that the program was "of value." The FBI OGC also said that FBI Director Mueller and Deputy Director Pistole provided congressional testimony in February and May 2006, respectively, about the value of the program, which the FBI OGC stated was based in part on the results of the study.

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2. January 2006 Survey [REDACTED] E-Mail Meta Data Tippers

(TS//STLW//SI//OC/NF)

The CAU conducted a second study of Stellar Wind tippers in January 2006. According to Caproni, this study was in response to a request from the FISA Court about intelligence being obtained pursuant to the July 14, 2004, Pen Register/Trap and Trace Order that authorized the bulk collection of e-mail meta data. As discussed in Chapter Five, e-mail meta data was the first basket of Stellar Wind's signals collection activity that was placed under the FISA Court's authority. However, as noted earlier, the

³⁷¹ As noted, Caproni cited this lack of reporting from field offices as a reason for not being able to conduct a meaningful assessment of the Stellar Wind program's value in the spring of 2004. FBI Headquarters did not officially require field offices to report investigative results concerning [REDACTED] tippers until October 2004. According to the CAU analyst with whom the OIG spoke about the study, the idea of contacting field offices to discuss the disposition of tippers and to seek general observations about [REDACTED] was rejected because of the concern the inquiries might expose the Stellar Wind program.

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³⁷² By its methodology, the only tippers the study assessed for "significance" were those for which field offices reported investigative results to the CAU and therefore generally did not take into account tippers assigned as Discretionary leads. Discretionary leads, as distinguished from Action leads, did not require field offices to report to the CAU about how the tippers were used. Yet, according to FBI personnel, these leads sometimes were associated with ongoing investigations and sometimes provided new or additional indications of terrorist connections, or reported the content of communications indicating a subject's international movements. The "value" of this category of tippers was not captured in the FBI's study. (TS//STLW//SI//OC/NF)

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NSA continued to provide e-mail addresses to the FBI in Stellar Wind reports. ~~(TS//STLW//SI//OC/NF)~~

This second study, which reviewed each [REDACTED] e-mail tippers the NSA provided the FBI from August 2004 through January 2006, applied the same methodology for assessing "significance" that was used in CAU's first study. The second study found that none [REDACTED] e-mail tippers was "significant" under this standard. The report noted, however, that many of the investigations related to the reviewed e-mail tippers were still ongoing. In addition, the study observed that some of the tippers reviewed had only recently been disseminated to field offices for investigation and that it was possible investigation of these tippers had not been completed.

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D. FBI Judgmental Assessments of Stellar Wind Information
~~(S//NF)~~

To attempt to further assess the value of Stellar Wind information for the FBI, we interviewed FBI Headquarters officials and employees who regularly handled Stellar Wind information. We also interviewed personnel in FBI field offices who were responsible for handling [REDACTED] tippers. We asked these witnesses for their assessments of the impact of Stellar Wind or [REDACTED] information on FBI counterterrorism operations. We also recognize that FBI officials and agents other than those we interviewed may have had experiences with [REDACTED] different than those summarized below. ~~(TS//STLW//SI//OC/NF)~~

The members of Team 10 and its predecessor [REDACTED] were strong advocates of the program and stated that they believed it contributed significantly to FBI international terrorism investigations. Several claimed that program tippers helped the FBI identify previously unknown subjects, although they were not able to identify for us any specific cases where this occurred. Other witnesses cited the FBI's increased cooperation with the NSA on international terrorism matters as a side benefit of the Stellar Wind program.³⁷³ ~~(TS//STLW//SI//OC/NF)~~

FBI officials and agents from the International Terrorism and Operations Section (ITOS) expressed a more moderate assessment of Stellar Wind. None of the ITOS officials we interviewed could identify significant investigations to which Stellar Wind substantially contributed. However,

³⁷³ FBI Deputy General Counsel Julie Thomas also said that Stellar Wind helped improve the relationship between the FBI and CIA. She said the program provided an opportunity to demonstrate the "interoperability of different agencies," and based on her experience dealing with program-related matters the relationship between the FBI and the NSA was "better now than it has ever been." ~~(TS//STLW//SI//OC/NF)~~

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they were generally supportive of the program, often stating that it was "one tool of many" in the FBI's fight against international terrorism.
~~(TS//SI//NF)~~

ITOS personnel frequently noted for us the deficiencies in the Stellar Wind information disseminated to field offices, such as the lack of details about the foreign individuals allegedly involved in terrorism with whom domestic telephone numbers and e-mail addresses were in contact. However, these FBI employees believed the possibility that such contacts related to terrorism made investigating the tips worthwhile. Some ITOS witnesses also told us that in their experience the FBI was already aware of many of the telephone numbers and e-mail addresses disseminated under [REDACTED] but that this duplication did not mean the information was without investigative value. For example, one witness said such contacts could "help move cases forward" by confirming a subject's contacts with individuals involved in terrorism or identifying additional terrorist contacts.
~~(TS//STLW//SI//OC/NF)~~

One FBI Headquarters supervisory special agent said that FBI field offices might have been less critical of [REDACTED] had there been agents in the offices read into Stellar Wind. He said that such agents would have been better positioned than FBI Headquarters' officials to assure others in their respective offices about the reliability of the information being disseminated. A former ITOS section chief told the OIG that he proposed to the NSA that the head of each FBI field office be read into Stellar Wind for this reason and to be able to make fully informed decisions about handling the Stellar Wind tippers. ~~(TS//STLW//SI//OC/NF)~~

The most critical comments we heard about [REDACTED] impact came primarily from the supervisory special agents we interviewed who managed counterterrorism programs at the two FBI field offices we visited. These agents said the [REDACTED] tippers and any information developed from the leads might be useful, but that the [REDACTED] program was not an effective way to identify threats. For example, one supervisor stated that [REDACTED] represented FBI Headquarters' failure to prioritize threat information. He said that by simply disseminating [REDACTED] tippers to field offices in ECs that often provided little in the way of details, FBI Headquarters effectively made the field offices "insurance carriers," placing the responsibility solely on them to timely and adequately investigate every lead. The supervisor stated that ordinarily he accepts this responsibility as part of his job, but that the [REDACTED] tippers were especially frustrating

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as compared to other counterterrorism leads the office received because they did not provide sufficient information for him to prioritize the leads.³⁷⁴

Another supervisory special agent expressed a similar assessment of [REDACTED] stating that he felt the project "perverted the logical priority of tasking." He said that absent the leads' special status as part of [REDACTED] a very low percentage of the tippers would have been considered priority matters. He told us that he did not have the freedom to prioritize the leads in the manner he felt was warranted by the information provided in [REDACTED] ECs. ~~(TS//SI//NF)~~

Field office agents who investigated [REDACTED] leads also were critical of the lack of details contained in [REDACTED] ECs about the nature of the terrorist connection to the domestic contact, or about the contact itself, such as the duration or frequency of the calling activity. Some agents we interviewed said they also occasionally were frustrated by the prohibition on using [REDACTED] information in any judicial process, such as in FISA applications, although none could identify an investigation in which the restrictions adversely affected the case. ~~(TS//STLW//SI//OC/NF)~~

Most of the agents we interviewed viewed [REDACTED] tippers as just another type of lead that required appropriate attention, and the agents generally did not handle the leads with any greater care or sense of urgency than non-[REDACTED] counterterrorism leads. ~~(TS//SI//NF)~~

Moreover, none of the agents we interviewed identified an investigation in their office in which [REDACTED] played a significant role, nor could they recall how such a tipper contributed to any of their international terrorism cases. Nevertheless, the agents generally viewed [REDACTED] tippers as a potentially valuable source of information, noting that the information developed from the investigations of tippers might prove useful in the future. ~~(TS//SI//NF)~~

Agents also stated that through the threat assessment interviews they conducted of the subscribers to tipped telephone numbers, [REDACTED] "opened a window" to populations within the field offices' jurisdiction that

³⁷⁴ The supervisor stated that [REDACTED] leads had little investigative value to his office. First, he said the leads did not provide enough detail about the reliability of the information being provided. Such details might include, for example, what other individuals had access to the foreign telephone allegedly used by someone involved in international terrorism, and how many calls were made from that number and for what durations. These details would help evaluate the threat represented by the foreign number's contact with the tipped domestic number. Second, the supervisor said the [REDACTED] tippers lacked direction about what the office should do with a tipped number after a threat assessment has been conducted. ~~(TS//SI//NF)~~

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~~(TS//STLW//SI//OC/NF)~~

[S]uccessful national security investigations are rarely the result of a single source of information. Rather they occur after exhaustive hours of investigation and the use of legal process in which bits and pieces of intelligence from many sources are gathered and combined into a coherent whole. The *success* or *effectiveness* of any intelligence program – whether Stellar Wind . . . or anything else – is sometimes difficult to assess in the abstract because of that blending of multiple strains of intelligence and because success should never be measured only in terms of terrorist plots that have visibly been disrupted, but also in plots that never formed because our investigative actions themselves had a disruptive effect. (Italics in original.)³⁷⁵ ~~(TS//STLW//SI//OC/NF)~~

[The] impact of any single piece of intelligence or program is difficult to quantify. Combination of various information, including humint, sigint, and elsur, is necessary to address the global threat. Accordingly, it is not possible to make an unequivocal "but for" connection between a tip and any particular FBI investigation that has resulted in a seizure or arrest. However, the information has amplified, corroborated and directed FBI investigative resources. (TS//STLW//SI//OC/NF) —

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communications analysis. Mueller also stated that to the extent such information can be gathered and used legally it must be exploited and that he "would not dismiss the potency of a program based on the percentage of hits." Asked if he was familiar with any specific FBI investigations that represent Stellar Wind successes, Mueller said that as a general matter it is very difficult to quantify the effectiveness of an intelligence program without "tagging" the leads that are produced in order to evaluate the role the program information played in any investigation. ~~(TS//STLW//SI//OC/NF)~~

We also asked Mueller about the issue of allocating finite FBI resources to respond to Stellar Wind leads. Mueller said that in the period after the September 11 terrorist attacks, the FBI remained in a state of continuous alert for several years. Mueller stated that he understood the President's desire to take every step to prevent another terrorist attack, and believes that it would be wrong not to utilize all available capabilities to accomplish this, so long as it is done legally. ~~(TS//STLW//SI//OC/NF)~~

Mueller also commented on media reports regarding FBI agents' frustration with the volume of [REDACTED] leads. For example, articles described complaints of unidentified FBI field agents regarding the lack of information in the tippers they received under [REDACTED] and how the high volume of tippers necessitated devoting significant resources to what were described as "dry leads."³⁷⁶ Mueller said that the agents' frustration was similar to that expressed about other sources for the thousands of leads the FBI received after September 11, such as calls from citizens. Mueller stated that he understood the frustration associated with expending finite resources on numerous leads unlikely to have a terrorism nexus, but said that his philosophy after September 11 was that "no lead goes unaddressed." Moreover, he stated that frustrations can result from any counterterrorism program. ~~(S//NF)~~

We also interviewed Kenneth Wainstein, the first Assistant Attorney General for the Justice Department's National Security Division, which was created in September 2006. Wainstein told us that he was aware of "both sides" on the question of Stellar Wind's value. He also said that he heard the government had not "gotten a heck of a lot out of it," but noted that NSA Director Hayden and FBI Director Mueller have stated that the program was valuable. ~~(S//NF)~~

Hayden told us that he always felt the Stellar Wind program was worthwhile and successful. [REDACTED]

³⁷⁶ See, e.g., Lowell Bergman, et al., "Domestic Surveillance: The Program; Spy Agency Data After Sept. 11 Led F.B.I. to Dead Ends," The New York Times, January 17, 2006. (U)

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[REDACTED]

Hayden said the FBI believed the leads represented "something certain," when in fact the leads were only "narrow threads" and that the idea was to help build the FBI's intelligence base. Hayden also observed that the enemy may not have been as embedded in the United States as much as feared, but said that he believes Stellar Wind helped determine this. ~~(TS//STLW//SI//OC/NF)~~

E. Examples of FBI Counterterrorism Cases Involving Stellar Wind Information ~~(S//NF)~~

As part of our review, we sought to identify specific FBI international terrorism investigations in which Stellar Wind information was used and to describe the information's specific contributions to the investigations. We agree with FBI officials that this is a difficult task in view of the nature of these investigations, which frequently are predicated on multiple sources of information. To the extent Stellar Wind tips played a role in an investigation, the tips could be one of several sources of information acquired over time and used by the FBI to pursue the investigation. Moreover, the FBI agents and analysts we interviewed during our review could not say that "but for" a Stellar Wind tipper a given investigation would not have been productive, and they were unable to recall specifically how, if at all, Stellar Wind intelligence may have caused their investigations to take a particular direction. ~~(S//NF)~~

Our review did not seek to describe Stellar Wind's impact on each FBI field office, and we recognize that FBI officials and agents other than those we interviewed might have had experiences with [REDACTED] different than those summarized in this chapter. [REDACTED]

Because such reporting was not disseminated to FBI field offices under [REDACTED] any contribution the information might have made to investigations FBI personnel we interviewed were familiar with might not have been accounted for in our questions about Stellar Wind and [REDACTED] information. ~~(TS//STLW//SI//OC/NF)~~

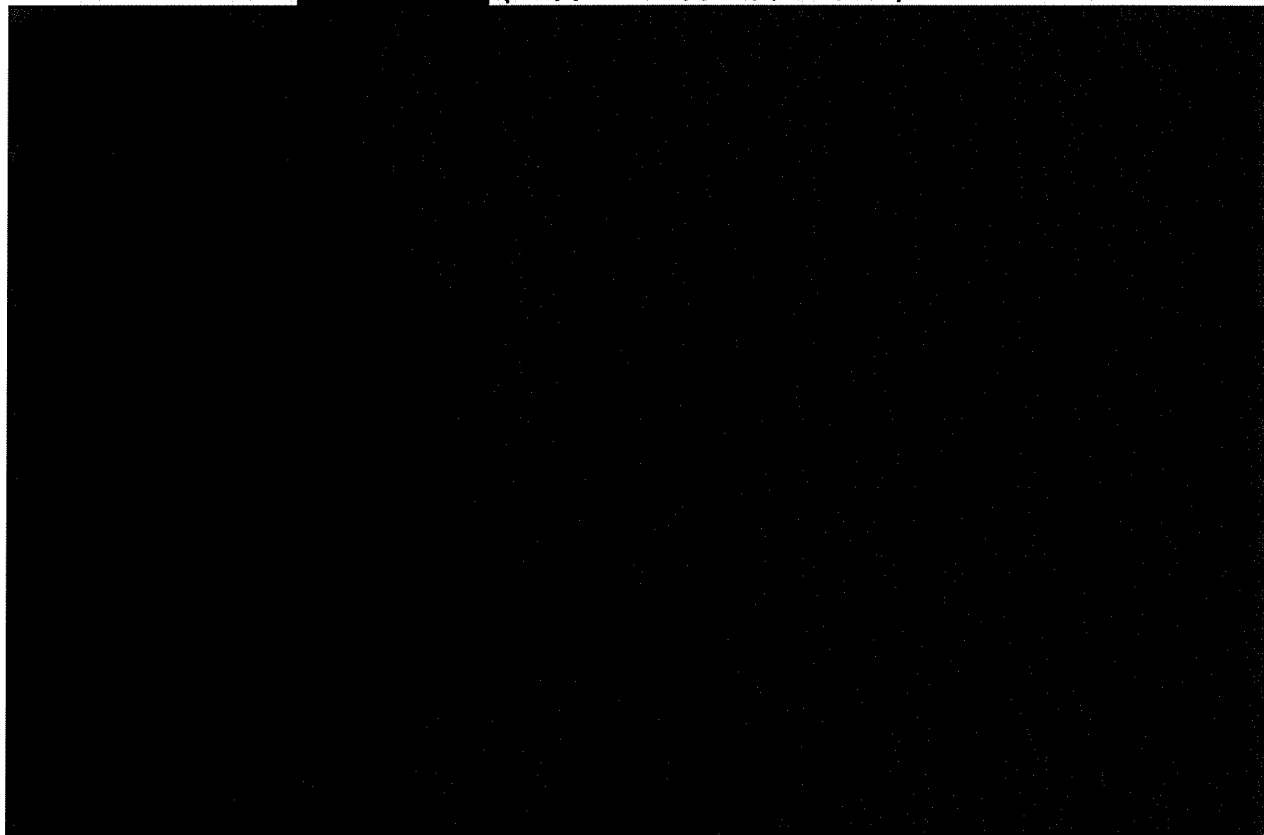
In view of these difficulties, we examined several investigations frequently cited in NSA and FBI documents the OIG obtained during this

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review as examples of Stellar Wind information that contributed to the FBI's counterterrorism efforts.³⁷⁷ For these investigations, we examined [REDACTED] ECs, FBI Letterhead Memoranda describing the status of investigative activities in specific cases, Counterterrorism Division responses to OIG questions about the role of [REDACTED] in specific investigations, government pleadings filed in international terrorism prosecutions, and FBI briefing materials.³⁷⁸ ~~(TS//STLW//SI//OC/NF)~~

1. [REDACTED]

~~(TS//STLW//SI//OC/NF)~~

³⁷⁷ As noted above, the FBI was not the only customer of Stellar Wind information. The CIA and the National Counterterrorism Center also received Stellar Wind reports potentially relevant to their operations. Pursuant to a directive in the FISA Amendments Act of 2008, Intelligence Community OIGs are examining the impact Stellar Wind had on their respective agencies or if Stellar Wind information contributed to their agencies' operations. ~~(TS//STLW//SI//OC/NF)~~

³⁷⁸ The briefing materials were prepared by the FBI's Communications Exploitation Section (CXS) shortly after aspects of the Stellar Wind program were publicly revealed in a series of New York Times articles in December 2005. The briefing materials were prepared at the direction of FBI General Counsel Valarie Caproni, who anticipated that Director Mueller and Deputy Director Pistole would be called to testify about the program. These briefing materials were intended to help prepare Mueller and Pistole for their testimony. The briefing materials include summaries of specific cases relating to Stellar Wind information that were highlighted by the NSA. ~~(TS//STLW//SI//OC/NF)~~

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[REDACTED]

[REDACTED]

[REDACTED]

several [REDACTED] This information generated leads for FBI field offices. ~~(TS//STLW//SI//OC/NF)~~

Several of these leads resulted in the FBI initiating investigations of [REDACTED] to identify any involvement in terrorism. In most cases, the FBI concluded that the individuals' connection [REDACTED] was not related to any involvement in terrorism. However, in one case FBI investigation determined that the individual was in contact with additional [REDACTED] engaged in activities indicating possible involvement in terrorist activities.³⁸¹ In another case, the FBI

³⁷⁹ We described [REDACTED] in Chapter Three. ~~(S//OC/NF)~~

³⁸⁰ [REDACTED]

[REDACTED]

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The subject of another of the [REDACTED] leads generated by [REDACTED] was already under investigation by an FBI field office. The [REDACTED] lead caused the FBI office to convert its preliminary investigation into a full investigation and obtain emergency authorization to conduct electronic surveillance under FISA [REDACTED] [REDACTED] used by the individual. The FBI also interviewed the individual several times and issued National Security Letters [REDACTED] [REDACTED] However, the FBI did not develop any information that linked the individual to terrorism or terrorist groups.

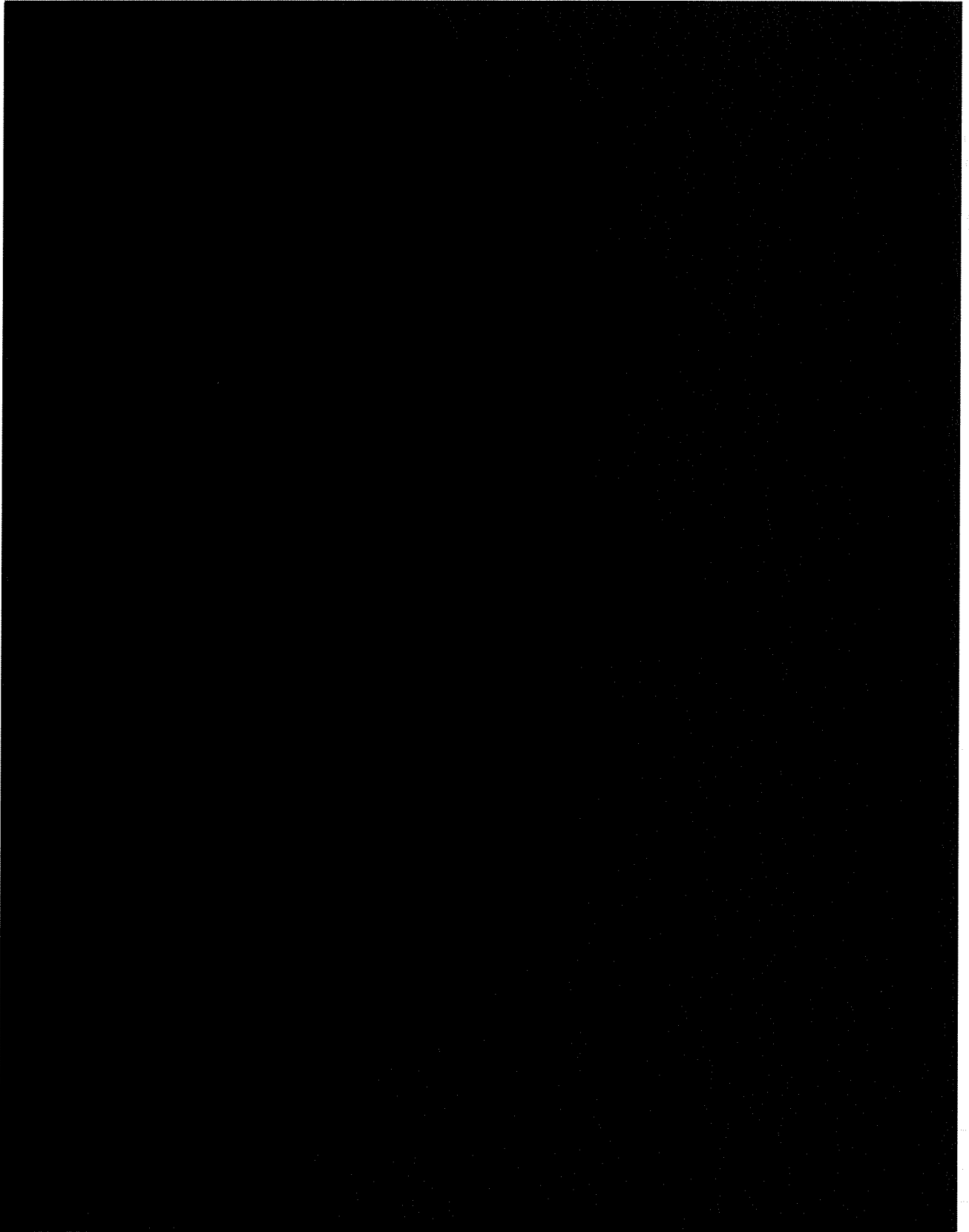
~~(TS//STLW//SI//OC/NF)~~

2. [REDACTED] (~~TS//STLW//SI//OC/NF~~)

On the FBI's field office

~~(S//OC/NF)~~

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However, according to documents provided to the OIG, the FBI was

[REDACTED]

The FBI therefore was unable to establish that there was a nationwide conspiracy [REDACTED] to provide material support to terrorism. (S//OC/NF)

Nevertheless, FBI documents state that after [REDACTED] was closed, field offices with [REDACTED]-related investigations conducted "successful disruption operations" of criminal activities that were identified during the course of the investigations. (S//OC/NF)

3.

(TS//STLW//SI//OC/NF)

[REDACTED]

The FBI's [REDACTED] opened a full investigation on [REDACTED] based on his statements [REDACTED] (S//OC/NF)

Acting in coordination with [REDACTED] law enforcement and intelligence agencies, the FBI learned that a group of

[REDACTED]

This investigation came to be known by the code name [REDACTED] 384 (TS//SI//OC/NF)

383

[REDACTED]

384

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED] The EC set a discretionary lead for the FBI [REDACTED], but encouraged the field office to "provide any pertinent follow-up questions to . . . CAU, for submission to and consideration by the [REDACTED] source." (TS//STLW//SI//OC/NF)-

[REDACTED]

An FBI response to an OIG request for information about the role of [REDACTED] in [REDACTED] case stated that as a result of the [REDACTED] tipper, the [REDACTED] located [REDACTED] after [REDACTED] return to the United States and established surveillance on [REDACTED]. In an FBI document entitled [REDACTED]

385 FBI documents we reviewed do not indicate how this information was obtained or whether it was derived from Stellar Wind. (TS//STLW//SI//OC/NF)-

386 The briefing materials state that it could not be verified whether [REDACTED]

(S//OC/NF)-

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387 ~~(TS//STLW//SI//OC/NF)~~

~~(TS//STLW//SI//OC/NF)~~

~~(TS//STLW//SI//OC/NF)~~

~~(S//OC/NF)~~

~~(S//OC/NF)~~

~~(TS//STLW//SI//OC/NF)~~

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On [REDACTED] pled guilty to [REDACTED] of [REDACTED]

[REDACTED] remains incarcerated [REDACTED]

~~(S//NF)~~

According to a [REDACTED] FBI PowerPoint presentation about the FBI's role in Stellar Wind, the [REDACTED] tipper "facilitated the FBI's ability to locate, initiate physical surveillance, and debrief [REDACTED] in a timely manner." The facts reviewed by the OIG show that [REDACTED] failed to result in notification to the FBI of [REDACTED] return to the United States, but that through Stellar Wind information the FBI was able to locate [REDACTED] and obtain surveillance of [REDACTED] ~~(TS//STLW//SI//OC/NF)~~

4. [REDACTED] ~~(TS//STLW//SI//OC/NF)~~

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~~TOP SECRET//STLW//HCS//SI//ORCON//NOFORN~~

According to FBI briefing material, as a result of the [REDACTED] tipper the [REDACTED] opened a full international terrorism investigation on [REDACTED] (S//OC/NF)

[REDACTED]

After receiving the [REDACTED] tipper in [REDACTED] the [REDACTED] requested that FBI Headquarters apply for a FISA order to conduct surveillance of [REDACTED]. The FBI subsequently obtained [REDACTED] and began FISA electronic surveillance [REDACTED] (TS//STLW//SI//OC/NF)

According to an [REDACTED] Letterhead Memorandum (LHM) drafted by the FBI case agent on [REDACTED] the FBI determined from [REDACTED]

[REDACTED]

(TS//STLW//SI//OC/NF)

389 According to the EC, [REDACTED] interviewed in connection with the FBI's effort to ascertain [REDACTED] who the FBI suspected of having ties to [REDACTED] (S//NF)

390 According to the EC, the individual was reported to have told the police [REDACTED] (S//OC/NF)

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[REDACTED]

The [REDACTED] LHM described other evidence seized [REDACTED]

[REDACTED]

In addition, the LHM described additional evidence gathered through several detainee interviews [REDACTED]

[REDACTED] (S//OC/NF)

The FBI arrested [REDACTED] and an associate [REDACTED] were indicted on [REDACTED]

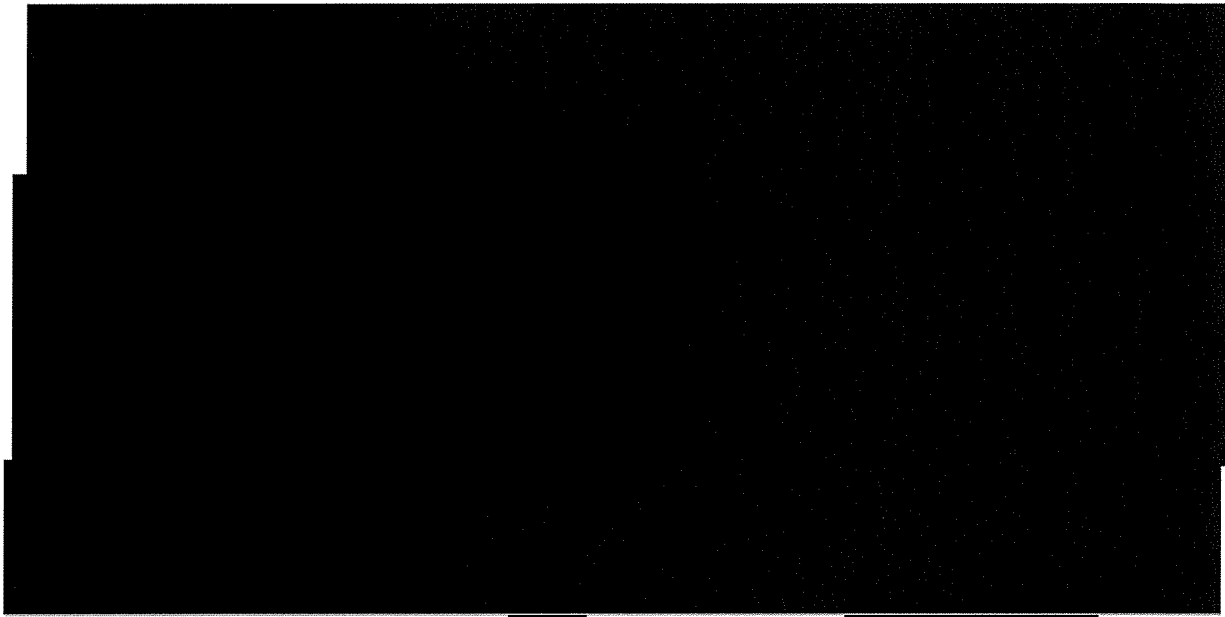
[REDACTED] indicted on [REDACTED]

[REDACTED] (S//NF)

The arrest and indictment arose out of [REDACTED]

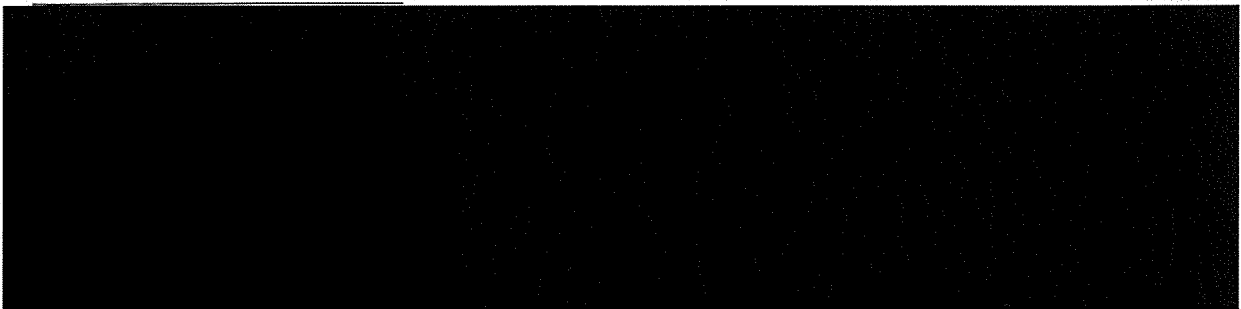
[REDACTED] (S//NF)

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Following [REDACTED] trial, [REDACTED] was convicted on [REDACTED] [REDACTED]
[REDACTED]³⁹³ He was sentenced to [REDACTED] prison term. ~~(S//NF)~~

In an undated summary of successes under the Stellar Wind program,
the NSA characterized [REDACTED] as



~~(S//NF)~~ [REDACTED]³⁹³ [REDACTED] was convicted on [REDACTED] against [REDACTED]

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~~TOP SECRET//STLW//HCS//SI//ORCON//NOFORN~~

The government's response to the [REDACTED] stated that the FBI initiated a national security-international terrorism investigation of [REDACTED] after receiving the [REDACTED] EC. The government stated that the [REDACTED]

[REDACTED] (TS//STLW//SI//OC/NF)

5. [REDACTED] (TS//STLW//SI//OC/NF)

The FBI closed its preliminary investigation of [REDACTED] after it concluded [REDACTED] had no nexus to terrorist activities.

(S//NF)

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[REDACTED]

According to FBI briefing materials, based on the [REDACTED] investigation of [REDACTED] associates [REDACTED] a FISA order was obtained for [REDACTED] According to an FBI declaration filed in discovery litigation concerning [REDACTED] the [REDACTED] tipper in [REDACTED] investigation was not used to obtain the FISA order; however, the declaration stated that the tipper [REDACTED]

[REDACTED]

(TS//STLW//SI//OC/NF)

[REDACTED] was arrested by the FBI later in [REDACTED] According to the FBI briefing materials, [REDACTED]

[REDACTED]

(S//OC/NF)

On [REDACTED] the FBI applied for and obtained a FISA order to conduct electronic surveillance and a physical search [REDACTED] By this time, [REDACTED] had been in FBI custody for several days.³⁹⁵ In support of the FISA application, the government reported that [REDACTED] also in custody at that time, recently had [REDACTED]

³⁹⁴ Based on the specific wording of the EC, it is evident that the tipper was derived

(TS//STLW//SI//OC/NF)

[REDACTED]

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~~TOP SECRET//STLW//HCS//SI//ORCON//NOFORN~~

[REDACTED]

On [REDACTED] pleaded guilty to [REDACTED]

[REDACTED]

397 ~~(S//NF)~~

The NSA recommended that the FBI cite [REDACTED] investigation in briefing materials as an example of Stellar Wind's contribution to counterterrorism efforts. The FBI briefing materials also state that the tipper in [REDACTED] investigation was "instrumental in [REDACTED] becoming the subject of a Full Investigation on [REDACTED]" ~~(TS//STLW//SI//OC/NF)~~

In response to the OIG's request for information about the role [REDACTED] information played in the investigation [REDACTED] the FBI's Counterterrorism Division told us [REDACTED] that, based on its searches of internal FBI databases and discussions with the case agents, "no [REDACTED] reporting factored into [REDACTED] investigation." According to a [REDACTED] declaration the FBI filed in [REDACTED] prosecution, the [REDACTED] tipper in [REDACTED] investigation "did not directly lead to any information or evidence that was used in the prosecution of the case against [REDACTED] and was not incorporated into any application to a court, including the [FISA Court]."³⁹⁸ ~~(TS//STLW//SI//OC/NF)~~

[REDACTED]

398

[REDACTED]

~~(TS//STLW//SI//OC/NF)~~

~~TOP SECRET//STLW//HCS//SI//ORCON//NOFORN~~

~~TOP SECRET//STLW//HCS//SI//ORCON/NOFORN~~

V. OIG Analysis (U)

The FBI created the [REDACTED] project to disseminate Stellar Wind information as leads to FBI field offices and assigned the CAU's Team 10 to the NSA to work on Stellar Wind full-time for this purpose. We found that the co-location improved the FBI's knowledge about Stellar Wind operations and gave the NSA better insight about how FBI field offices investigated Stellar Wind information. We were told these benefits translated to improvements in the Stellar Wind report drafting process, and by extension, in [REDACTED] leads. (TS//STLW//SI//OC/NF)

One of the changes the FBI implemented to attempt to improve the investigation of [REDACTED] leads was to make FBI Headquarters-based CAU, instead of the field offices, responsible for issuing National Security Letters (NSL) to obtain subscriber information on tipped telephone numbers and e-mail addresses. This measure, initiated in July 2003, was intended to address agent concerns that [REDACTED] leads did not provide sufficient information to initiate national security investigations, a prerequisite under Justice Department investigative guidelines to issuing NSLs. (TS//STLW//SI//OC/NF)

However, we found that the CAU issued the NSLs from the [REDACTED] control file, a non-investigative file created in September 2002 to serve as a repository for [REDACTED]-related communications between FBI Headquarters and field offices. Issuing the NSLs from a control file instead of an investigative file was contrary to internal FBI policy. The FBI finally opened an investigative file for the [REDACTED] project in November 2006. We believe the CAU and OGC officials involved in the decision to issue NSLs from the [REDACTED] control file concluded in good faith that the FBI had sufficient predication either to connect the [REDACTED] NSLs with existing preliminary or full investigations of al Qaeda and affiliated groups or to open new preliminary or full investigations in compliance with Justice Department investigative guidelines. However, we also concluded that the FBI could have, and should have, opened an investigative file for the [REDACTED] project when the decision first was made to have FBI Headquarters issue NSLs for [REDACTED] leads. (TS//STLW//SI//OC/NF)

We also described in this chapter a change the FISA Court made in March 2004 to the "scrubbing" process used to account for Stellar Wind information in international terrorism FISA applications. The change requires the FBI's Team 10 and FBI OGC, in coordination with the Department's Office of Intelligence (formerly OIPR), to determine whether any facility (telephone number or e-mail address) that appears in a FISA application also appeared in a Stellar Wind report and, if so, whether the FBI had developed, independent of Stellar Wind, an investigative interest in the facility before it was the subject of an [REDACTED] tipper, or whether the

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facility would have been "inevitably discovered." FISA Court Presiding Judge Kollar-Kotelly imposed this additional scrubbing requirement after being advised of modifications made to Stellar Wind in March 2004 following the Justice Department's revised legal analysis of the program. The FBI and Office of Intelligence continue to expend significant resources to comply with this scrubbing requirement.³⁹⁹ However, we did not find any instances of the requirement causing the FBI not to be able to obtain FISA surveillance coverage on a target. ~~(TS//STLW//SI//OC/NF)~~

Our primary focus in this chapter was to assess the general role of Stellar Wind information in FBI investigations and its value to the FBI's overall counterterrorism efforts. Similar to the FBI, we had difficulty assessing the specific value of the program to the FBI's counterterrorism activities. However, based on our interviews of FBI managers and agents and our review of documents, and taking into account the substantial volume of leads the program generated for the FBI, we concluded that although the information produced under the Stellar Wind program had value in some counterterrorism investigations, it played a limited role in the FBI's overall counterterrorism efforts. ~~(S//NF)~~

The vast majority of Stellar Wind information the NSA provided the FBI related to telephone numbers and e-mail addresses the NSA identified through meta data analysis as having connections to individuals believed to be involved in international terrorism. The NSA rated a small percentage of these contacts

[REDACTED]

~~(TS//STLW//SI//OC/NF)~~

FBI agents and analysts with experience investigating [REDACTED] leads told us that most leads were determined not to have any connection to

³⁹⁹ As noted earlier, the scrubbing procedure applies both to NSA information derived from the Stellar Wind program and to information derived from the FISA Court's PR/TT and Section 215 bulk meta data orders. This is so because until mid-2008, when the Stellar Wind program officially was closed, leads the NSA developed from the FISA-authorized bulk meta data collections were disseminated under the Stellar Wind compartment. ~~(TS//STLW//SI//OC/NF)~~

⁴⁰⁰ Stated another way, the Stellar Wind program generated [REDACTED] leads for the FBI each month from October 2001 to February 2006.

~~(TS//STLW//SI//OC/NF)~~

~~TOP SECRET//STLW//HCS//SI//ORCON//NOFORN~~

~~TOP SECRET//STLW//HCS//SI//ORCON//NOFORN~~

terrorism, and they did not identify for us any specific cases where leads helped the FBI identify previously unknown subjects involved in terrorism (although several stated that this did occur). This is not surprising given that the vast majority of leads sent to FBI field offices for investigation concerned telephone numbers and e-mail addresses that the NSA already had determined were at best one or two steps removed from numbers and addresses suspected of being used by individuals believed to be involved in terrorism. (TS//STLW//SI//OC/NF)

The FBI's two statistical studies that attempted to assess the "significance" of Stellar Wind meta data leads to FBI counterterrorism efforts did not include explicit conclusions on the program's usefulness. The first study found [REDACTED] samples taken from [REDACTED] meta data leads the NSA provided the FBI from approximately October 2001 to December 2005, [REDACTED] or 1.2 percent [REDACTED] made "significant" contributions. The FBI's second statistical study, which reviewed each [REDACTED] e-mail tipper the NSA provided the FBI from August 2004 through January 2006, identified no examples of "significant" contributions to FBI counterterrorism efforts.⁴⁰¹ The FBI OGC told us that FBI executive management's statements in congressional testimony that the Stellar Wind program had value was based in part on the results of the first study. (TS//STLW//SI//OC/NF)

While we believe Stellar Wind's role in FBI cases was limited, assessing the value of the program to the FBI's overall counterterrorism efforts is more complex. Some witnesses commented that an intelligence program's value cannot be assessed by statistical measures alone. Other witnesses, such as General Hayden, said that the value of the program may lie in its ability to help the Intelligence Community determine that the terrorist threat embedded within the country is not as great as once feared. Witnesses also suggested that the value of the program should not depend on documented "success stories," but rather on maintaining an intelligence capability to detect potential terrorist activity in the future. (TS//SI//NF)

FBI personnel we interviewed generally were supportive of the Stellar Wind (or [REDACTED] program, calling the information "one tool of many" in the FBI's anti-terrorism efforts that "could help move cases forward" by, for example, confirming a subject's contacts with individuals involved in terrorism or identifying additional terrorist contacts. However, FBI personnel also frequently noted for us the deficiencies in the Stellar Wind information disseminated to FBI field offices, such as the lack of details

⁴⁰¹ As described earlier in this chapter, the FBI considered a tipper "significant" if it led to any of three investigative results: the identification of a terrorist, the deportation from the United States of a suspected terrorist, or the development of an asset that can report about the activities of terrorists. (TS//STLW//SI//OC/NF)

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about the foreign individuals allegedly involved in terrorism with whom domestic telephone numbers and e-mail addresses were in contact. Yet, these FBI employees also believed the possibility that such contacts related to terrorism made investigating the tips worthwhile. Some FBI employees also cited the FBI's increased cooperation with the NSA on international terrorism matters as a side benefit of the Stellar Wind program.

(TS//STLW//SI//OC/NF)

FBI Director Mueller told us that he believes the Stellar Wind program was useful and that the FBI must follow every lead it receives in order to prevent future terrorist attacks. He said "communications are absolutely essential" to this task and called meta data the "key" to the FBI's communications analysis. Mueller also stated that to the extent such information can be gathered and used legally it must be exploited and that he "would not dismiss the potency of a program based on the percentage of hits." (TS//STLW//SI//OC/NF)

We sought to look beyond these comments of general support for Stellar Wind to specific, concrete examples of the program's contributions that also illustrated the role Stellar Wind information could play. We therefore examined five cases frequently cited in documents we reviewed and during our interviews as examples of Stellar Wind's contribution to the FBI's counterterrorism efforts. The cases include [REDACTED]

[REDACTED]
In another case, Stellar Wind information revealed to the FBI that [REDACTED]

[REDACTED] (TS//STLW//SI//OC/NF)

In another case [REDACTED]

[REDACTED] According to the FBI, while the Stellar Wind information was either never used or "was of no value" in the criminal investigation that led to [REDACTED] arrest and conviction, it was an [REDACTED] tipper that led to the national security investigation that preceded the criminal prosecution. (TS//STLW//SI//OC/NF)

The final investigation we examined [REDACTED] did not appear to result directly from Stellar Wind information. The NSA and the FBI at times have cited [REDACTED] case as an example of the contributions of Stellar Wind to

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~~TOP SECRET//STLW//HCS//SI//ORCON/NOFORN~~

counterterrorism investigations. An FBI declaration filed in [REDACTED] prosecution indicated that [REDACTED]

[REDACTED] Moreover, the FBI told us in response to our inquiry that Stellar Wind information did not "factor into [REDACTED] investigation." However, we concluded that Stellar Wind may have played some indirect role [REDACTED] becoming the subject of a Full Investigation by the FBI. Our review of documents indicated that [REDACTED] investigation, which appears to have been advanced by Stellar Wind reporting, might have caused the FBI to reopen its investigation [REDACTED] We were unable to describe with the same certainty as in [REDACTED] investigation the extent of Stellar Wind's contribution to [REDACTED] investigation, in part because of differing assessments in the FBI's own documents regarding the role of Stellar Wind this matter.

~~(TS//STLW//SI//OC/NF)~~

In short, we found that Stellar Wind generally has played a limited role in FBI counterterrorism investigations, but that the evidence shows there are cases where Stellar Wind information had value. For example, in some of the cases we examined Stellar Wind information caused the FBI to take action that led to useful investigative results. However, in others the connection between the Stellar Wind information and the FBI's investigative actions was more difficult to discern. (S//NF)

As discussed in Chapter Five and in this chapter, Stellar Wind's bulk meta data collection activities were transitioned to FISA authority and are ongoing. The FBI, under the [REDACTED] project (the successor to [REDACTED]), requires field offices to conduct, at a minimum, threat assessments on telephone numbers and e-mail addresses the NSA derives from this FISA-authorized collection that the FBI is not already aware of, including numbers and addresses one or two steps removed from direct contacts with individuals involved in terrorism. In view of our findings about the Stellar Wind program's contribution to the FBI's counterterrorism efforts, we believe that the FBI should regularly assess the impact [REDACTED] leads have on FBI field offices and whether limited FBI resources should be used to investigate all of them. (TS//STLW//SI//OC/NF)

Another consequence of the Stellar Wind program and the FBI's approach to assigning leads was that many threat assessments were conducted on individuals located in the United States, including U.S. persons, who were determined not to have any nexus to terrorism or

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~~TOP SECRET//STLW//HCS//SI//ORCON/NOFORN~~

represent a threat to national security.⁴⁰² These assessments also caused the FBI to collect and retain a significant amount of personal information about the users of tipped telephone numbers and e-mail addresses. In addition to an individual's name and home address, such information could include where the person worked, records of foreign travel, and the identity of family members. The results of these threat assessments and the information that was collected generally were reported in communications to FBI Headquarters and uploaded into FBI databases.

~~(TS//STLW//SI//OC/NF)~~

The FBI's collection of U.S. person information in this manner is ongoing under the NSA's FISA-authorized bulk meta data collection. To the extent leads derived from this program generate results similar to those under Stellar Wind, the FBI will continue to collect and retain a significant amount of information about individuals in the United States, including U.S. persons, that do not have a nexus to terrorism or represent a threat to national security. ~~(TS//STLW//SI//OC/NF)~~

We recommend that as part of the [REDACTED] project, the Justice Department's National Security Division (NSD), working with the FBI, should collect information about the quantity of telephone numbers and e-mail addresses disseminated to FBI field offices that are assigned as Action leads and that require offices to conduct threat assessments. The information compiled should include whether individuals identified in threat assessments are U.S. or non-U.S. persons and whether the threat assessments led to the opening of preliminary or full national security investigations. With respect to threat assessments that conclude that users of tipped telephone numbers or e-mail addresses are not involved in terrorism and are not threats to national security, the Justice Department should take steps to track the quantity and nature of the U.S. person information collected and how the FBI retains and utilizes this information. This will enable the Justice Department and entities with oversight responsibilities, including the OIG and congressional committees, to assess the impact this intelligence program has on the privacy interests of U.S. persons and to consider whether, and for how long, such information should be retained. ~~(TS//SI//OC/NF)~~

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We also recommend that, consistent with NSD's current oversight activities and as part of its periodic reviews of national security investigations at FBI Headquarters and field offices, NSD should review a representative sampling [REDACTED] leads to those offices. For each lead examined, NSD should assess FBI compliance with applicable legal requirements in the use of the lead and in any ensuing investigations, particularly with the requirements governing the collection and use of U.S. person information. ~~(TS//SI//OC/NF)~~

In sum, we agree that it is difficult to assess or quantify the effectiveness of a particular intelligence program. However, based on the interviews we conducted and documents we reviewed, we found that Stellar Wind information generally played a limited role in the FBI's counterterrorism efforts, but that the information had value in some cases. In addition, some witnesses said the program provides an "early warning system" to allow the Intelligence Community to detect potential terrorist attacks, even if the system has not specifically uncovered evidence of preparations for such an attack. Moreover, other OIGs in the Intelligence Community are reviewing their agency's involvement with the program and the results of those reviews, analyzed together, will provide a more comprehensive picture of the program's overall usefulness. ~~(TS//STLW//SI//OC/NF)~~

Finally, because the bulk meta data aspect of the Stellar Wind program continues under FISA authority, we recommend that the NSD take steps to gather information on the continuing operations of the program, including the use and handling of vast amounts of information on U.S. persons and the effectiveness of the program in FBI counterterrorism investigations. ~~(TS//STLW//SI//OC/NF)~~

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CHAPTER SEVEN

DISCOVERY ISSUES RELATED TO STELLAR WIND INFORMATION ~~(TS//SI//NF)~~

In this chapter we discuss the government's statutory and judicial discovery obligations in international terrorism cases relating to Stellar Wind-derived information. Under the Stellar Wind program, the federal government collected vast amounts of information, including the content of communications and meta data about telephone and e-mail communications involving U.S. citizens and non-U.S. citizens. [REDACTED]

[REDACTED] potentially triggering an obligation under the Federal Rules of Criminal Procedure and applicable case law for the government to disclose certain information to the defendant. This obligation created a tension between the need to protect the secrecy of the Stellar Wind program and the need to comply with legal disclosure requirements.

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In this chapter, we examine the process by which the Department of Justice attempted to resolve this tension and meet its discovery obligations to criminal defendants.⁴⁰³ (U)

I. Relevant Law (U)

The government's obligation to disclose certain statements made by a defendant and to disclose other information concerning a defendant in a criminal proceeding comes primarily from two sources: Federal Rule of Criminal Procedure 16 and the U.S. Supreme Court case of *Brady v. Maryland*, 373 U.S. 83 (1963). (U)

Federal Rule of Criminal Procedure 16(a)(1)(B)(i) requires the government to make various disclosures at the request of a criminal defendant. Among other things, the government must disclose "any relevant written or recorded statement by the defendant if the statement is within the government's possession, custody, or control; and the attorney for the government knows – or through due diligence could know – that the statement exists[.]" Rule 16(a)(1)(E) provides that, upon a defendant's request, the government must allow a defendant to inspect and copy papers,

⁴⁰³ In our review, we did not seek to determine what the government disclosed in specific cases. Rather, we focused on the adequacy of the process that the Justice Department implemented to comply with its discovery obligations in cases that involved Stellar Wind-derived information. ~~(TS//STLW//SI//OC/NF)~~

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documents, data, and other materials "if the item is within the government's possession, custody, or control" and the item is material to preparing the defense; the government intends to use the item in its case-in-chief at trial; or the item was obtained from or belongs to the defendant. (U)

Under Rule 16, a defendant's statements carry a "near presumption of relevance," and "the production of a defendant's statements has become 'practically a matter of right even without a showing of materiality.'" *United States v. Yunis*, 867 F.2d 617, 621-22, 625 & n.10 (D.C. Circuit 1989).⁴⁰⁴ (U)

Disclosure of a defendant's statements is usually made by the government after receiving a request pursuant to Rule 16. However, even without making a Rule 16 request, a defendant has an independent right to discovery of his statements and certain other relevant information under *Brady v. Maryland*, 373 U.S. 83 (1963). *Brady* requires the government to disclose evidence in its possession favorable to the defendant and material to either guilt or punishment. Material evidence must be disclosed if it is exculpatory or if it could be used to impeach a government witness. (U)

According to an Office of Intelligence Policy and Review (OIPR) memorandum on the government's Rule 16 and *Brady* obligations

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However, according to the memorandum, when production of the defendant's statements or other information would reveal classified information, the government may assert a national security privilege, sometimes known as the state secrets privilege.⁴⁰⁶ If the government asserts a colorable claim in a legal proceeding that classified information is privileged, the defendant must show that the information is not only

⁴⁰⁴ See also *United States v. Scarpa*, 913 F.2d 993, 1011 (2nd Cir. 1990), citing *United States v. McElroy*, 697 F.2d 459, 464 (2nd Cir. 1982) ("Rule 16 does not cover oral statements unrelated to the crime charged or completely separate from the government's trial evidence."). (U)

⁴⁰⁵ Counsel for Intelligence Policy James Baker told us the memorandum was drafted at his request by an Assistant U.S. Attorney who had been detailed to OIPR. Baker said he requested the memorandum to refresh his understanding of the government's discovery obligations in criminal prosecutions. (U//~~FOUO~~)

⁴⁰⁶ The state secrets privilege is a common law doctrine asserted by the United States government to protect classified information. See generally, *United States v. Reynolds*, 345 U.S. 1 (1952). (U)

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relevant but material. If the defendant can show materiality, some courts balance the defendant's need for disclosure against the government's substantial interest in protecting sources and methods associated with the sensitive information. See *United States v. Sarkissian*, 841 F.2d 959, 965 (9th Cir. 1988); *United States v. Smith*, 781 F.2d 1102, 1180 (4th Cir. 1985) (en banc). (U)

The government can also invoke the Classified Information Procedures Act (CIPA), 18 U.S.C. App. 3, to protect classified information in federal prosecutions. CIPA does not expand or limit a defendant's right to discovery under Rule 16; rather, CIPA allows a court, "upon a sufficient showing" to authorize the government to delete specified items of classified information from otherwise discoverable documents, substitute a summary of the information, or stipulate to relevant facts that the classified information would tend to prove. (U)

As detailed below, after aspects of the Stellar Wind program were disclosed in The New York Times and confirmed by the President in December 2005, the Justice Department invoked CIPA to prevent disclosure of the program and any program-derived information in [REDACTED] criminal cases. [REDACTED]

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II. Cases Raise Questions about Government's Compliance with Discovery Obligations (U)

The tension between the highly classified nature of the Stellar Wind program and the government's discovery obligations in criminal cases initially arose in [REDACTED]

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A. [REDACTED] ~~(TS//STLW//SI//OC/NF)~~

The Department's awareness that Stellar Wind would have implications in criminal discovery arose in a case involving [REDACTED]

[REDACTED]

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[REDACTED]

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information collected under Stellar Wind would be discoverable and, more generally, how the Stellar Wind collections might be treated in view of the government's discovery obligations in criminal prosecutions.


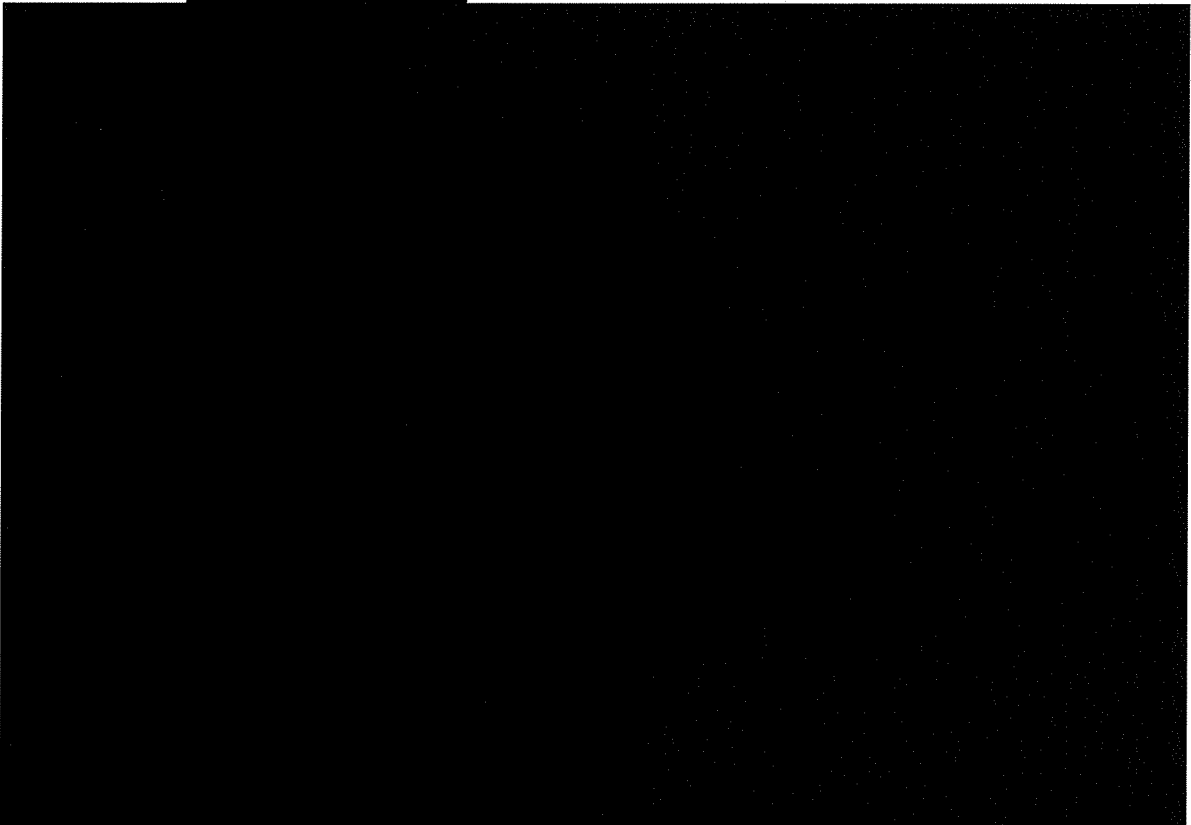
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Baker said he raised these issues with Attorney General Ashcroft, FBI Director Mueller, and other Justice Department, FBI, and NSA officials. Baker stated that they concluded that a determination should first be made whether the [REDACTED] obtained through Stellar Wind also were captured through FISA and therefore could be produced. Baker said it turned out [REDACTED] had been intercepted under FISA and could be produced under that authority rather than as a result of Stellar Wind collections. Baker told the OIG that he was relieved by this outcome, but continued to be concerned about future cases.

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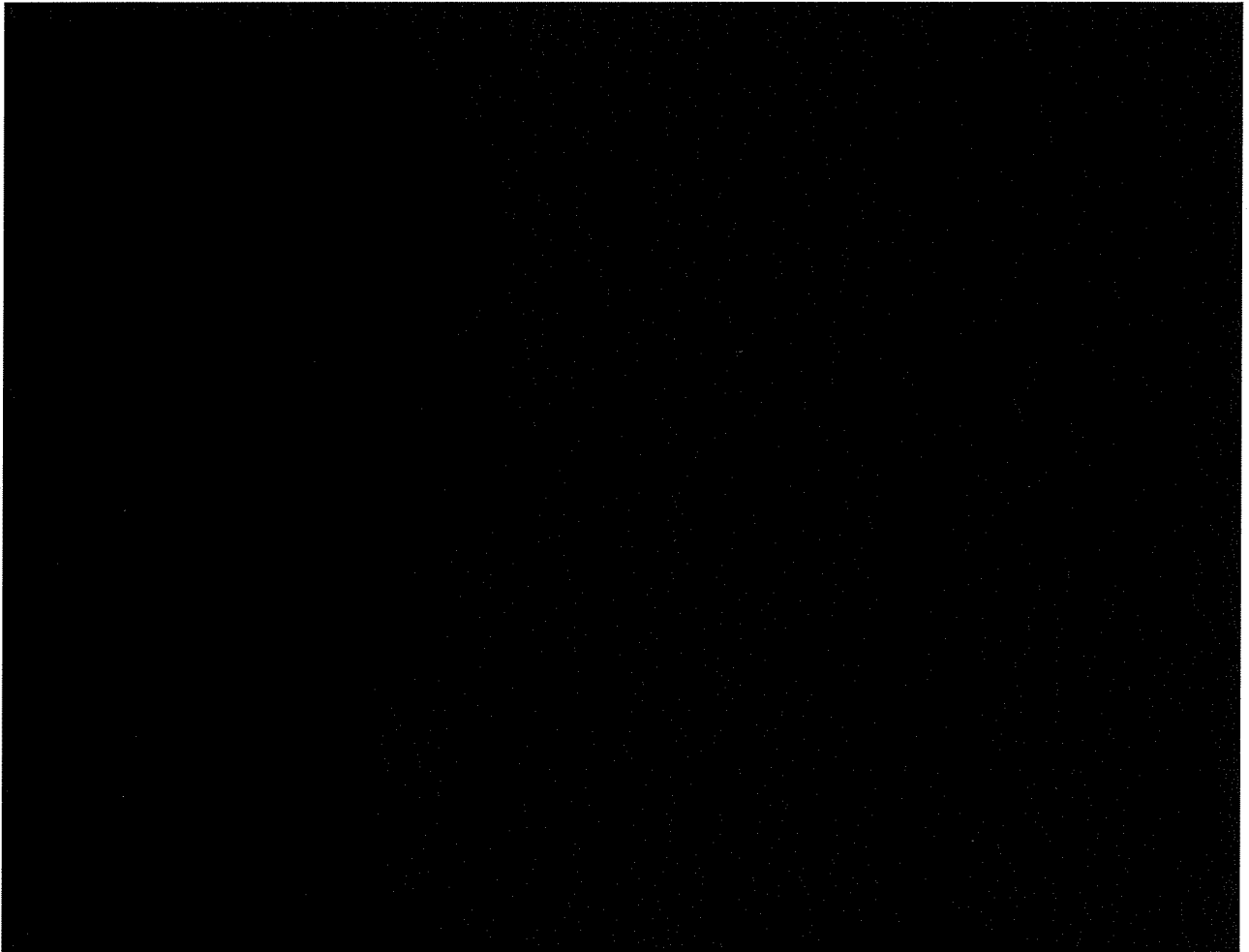
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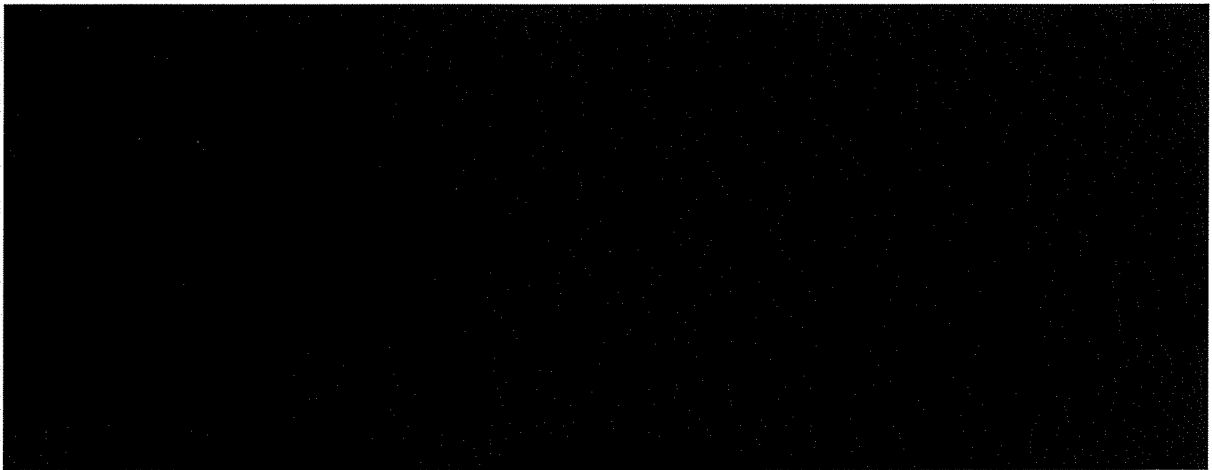


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On [REDACTED] Yoo orally recommended to Ashcroft that the Justice Department not disclose the Stellar Wind program intercepts to the [REDACTED] Yoo subsequently memorialized his advice in a memorandum. (TS//STLW//SI//OC/NF)

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[REDACTED]

Yoo finished his written memorandum regarding [REDACTED]

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[REDACTED]

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[REDACTED]

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As a final point, Yoo wrote,

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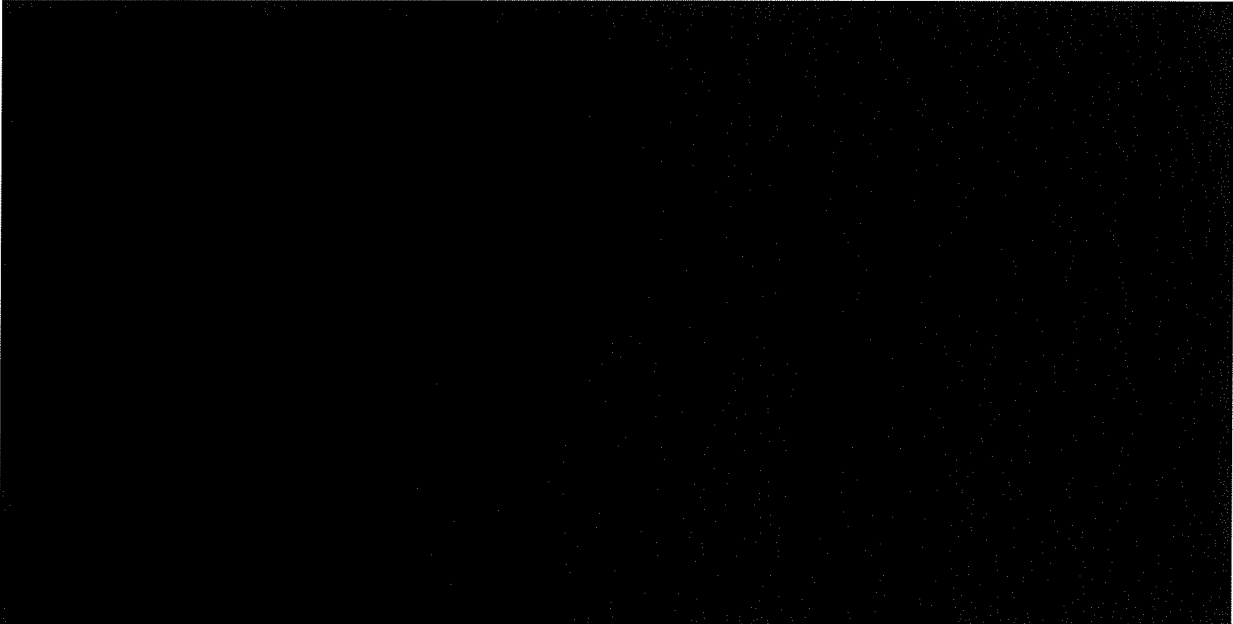
412 At the time Yoo wrote the [REDACTED] memorandum, he, Baker, and Ashcroft were the only non-FBI Justice Department officials read into the Stellar Wind program. ~~(TS//STLW//SI//OC/NF)~~

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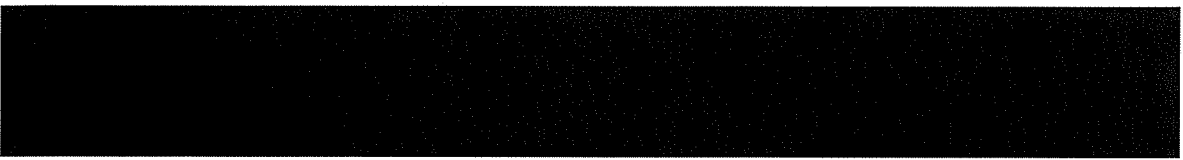
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In another internal Justice Department review of his actions, Yoo has acknowledged that he is not well versed in criminal law. During an interview with the Department's Office of Professional Responsibility (OPR) in connection with its investigation concerning his legal opinions in support of a detainee interrogation program, Yoo stated that "criminal prosecution process in the Department was not my specialty," and "criminal law was not my area."⁴¹⁵ ~~(TS//SI//OC/NF)~~

III. Criminal Division Examines Discovery Issues (U)

Following  the Justice Department's Criminal Division was tasked with developing procedures for handling Rule 16 disclosure issues because the issues fell within its area of expertise. As a result, in  Patrick Rowan, a senior counsel in the Criminal Division, was read into the program to deal with Stellar Wind-related discovery issues. Rowan's supervisor, Criminal Division Assistant Attorney General Christopher Wray, was also read into the program at the same time.



⁴¹⁵ The OPR investigation concerned a Top Secret compartmented program relating to detainee interrogations. Yoo drafted legal opinions for this program while in the Office of Legal Counsel. However, as discussed in Chapter Four, in contrast with the Stellar Wind program at least four other OLC attorneys assisted Yoo with drafting the legal memoranda. Yoo was also able to consult with Criminal Division attorneys and the client agency on this matter. ~~(TS//STLW//SI//OC/NF)~~

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